HEARING DATE AND TIME: August 1, 2013 at 10:30 a.m. (Eastern Time)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	**Chapter 11 Case No.**
MOTORS LIQUIDATION COMPANY, *et al.*, f/k/a General Motors Corp., *et al.*	:	**09-50026 (REG)**
Debtors.	:	**(Jointly Administered)**

MOTORS LIQUIDATION COMPANY GUC TRUST'S REPLY TO ROGER L. THACKER, ROGER L. SANDERS AND THOMAS J. HANSON'S RESPONSE TO THE MOTION TO COMPEL PARTICIPATION IN MANDATORY MEDIATION WITH RESPECT TO CLAIM NO. 27105 PURSUANT TO THE SECOND AMENDED ADR ORDER

TO THE HONORABLE ROBERT E. GERBER,
UNITED STATES BANKRUPTCY JUDGE:

The Motors Liquidation Company GUC Trust (the "**GUC Trust**"),[1] formed by the above captioned debtors (collectively, the "**Debtors**") in connection with the *Debtors' Second Amended Joint Chapter 11 Plan*, dated March 18, 2011, files this reply (the "**Reply**") to the *Opposition Memorandum of Roger L. Thacker, Roger L. Sanders, and Thomas J. Hanson to GUC Motion to Compel Mandatory Mediation of Claim No. 27105* (the "**Response**") (ECF No. 12477), and respectfully represents:

The Claimants are Incorrect in Asserting that the Thacker Claim is Not Currently Subject to Mandatory Mediation under the Court's Existing ADR Orders

1. In order for the Claimants to establish that they are not subject to mandatory mediation under the Court's existing ADR Orders, they must establish that (i) the provision in the Amended ADR Order which excepts "claims filed by the United States of America or its agencies," is still applicable in light of the Court's entry of the more recent Second Amended ADR Order, and (ii) pursuant to the Amended ADR Order, the Thacker Claim actually constitutes a claim "filed by the United States or its agencies."

2. The Claimants argue that the exception for governmental claims in the Amended ADR Order is still applicable because the Second Amended ADR Order is silent as to the treatment of claims filed by the United States and, moreover, the Second Amended ADR Order provides that it "supplement[s]" the Amended ADR Order.[2] However, the Claimants'

[1] Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to such terms in the *Motors Liquidation Company GUC Trust's Motion to Compel Roger L. Thacker, Roger L. Sanders, and Thomas J. Hanson to Participate in Mandatory Mediation with Respect to Claim No. 27105 Pursuant to the Second Amended ADR Order* (the "**Motion to Compel**") (ECF No. 12463).

[2] Response at 6-7. The Claimants assert therein that the GUC Trust "has in the past acknowledged that the ADR procedures in the Court's [Amended ADR Order] remain in full force and effect." That assertion is both incredulous and irrelevant because the ADR Procedures annexed to the Amended ADR Order is completely silent as to any carve-out for claims filed by the United States. The carve-out in question is located only in the Amended ADR

assertion of the continued applicability of the Amended ADR Order is incorrect due to a misinterpretation of the term "supplement." The use of that term in the Second Amended ADR Order is a reference to the expansion from the Amended ADR Order to the Second Amended ADR Order of the type of claims subject to the alternative dispute resolution process. As the GUC Trust indicated in its motion to approve the Second Amended ADR Order in the section addressing the relief requested, the "proposed Second Amended ADR Order would *supplement* the Amended ADR Order . . . by including the following as additional covered claims: . . . Environmental Claims . . . Patent Claims . . . Lower Tier Claims."[3] The Second Amended ADR Order and the ADR Procedures annexed thereto completely govern within their four corners all aspects of the alternative dispute resolution process as standalone documents.

3. The carve-out relied upon by the Claimants in the Amended ADR Order was specifically omitted in the final version of the Second Amended ADR Order to broaden the reach of the ADR Procedures. In fact, an earlier draft of the Second Amended ADR Order actually included the carve-out.[4] Prior to the entry of the Second Amended ADR Order, the United States, on behalf of the Environmental Protection Agency and the Department of the Interior, filed an objection seeking either the denial of the Second Amended ADR Order or, in the alternative, the inclusion in the Second Amended ADR Order of a carve-out applicable to the

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Order itself. As such, the continued applicability of the ADR Procedures annexed to the Amended ADR Order would not except the Thacker Claim from mandatory mediation.

[3] *Motors Liquidation Company GUC Trust's Motion to Supplement Amended Order Pursuant to 11 U.S.C. §105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Procedures, Including Mandatory Mediation* at 2 ("**Motion to Approve Second Amended ADR Order** ") (ECF No. 11413) (emphasis added).

[4] See proposed order annexed to the GUC Trust's Motion to Approve Second Amended ADR Order. (ECF No. 11413).

United States.[5] In its objection, the United States emphasized that its concern was centered on the application of the ADR Procedures to the United States' last remaining environmental claims.[6] By the time the Second Amended ADR Order was entered several months later, the United States and the GUC Trust had made such significant progress in the resolution of environmental claims that there was no ongoing reason for the United States to oppose the entry of the Second Amended ADR Order. Accordingly, the carve-out for claims filed by the United States was removed under the entered order.

4. Moreover, to the extent that this Court's ADR Orders should be enforced according to an interpretation of its plain terms, the Thacker Claim is subject to mandatory mediation because the claim does not fall within the express terms of the exception in the Amended ADR Order. The carve-out applies to claims "filed by" the "United States of America or its agencies." It contains no exemption for claims filed by third parties in their role as private citizens prosecuting a claim on behalf of the United States. As the GUC Trust noted in its Motion to Compel (ECF No. 12463), participation by the Claimants in mediation will not unduly burden the resources or consume the attention of the United States because the False Claims Act has itself redirected such burdens on the private citizens that chose to prosecute such claims in exchange for sharing any potential recovery on the claim.[7] In light of the foregoing, the Claimants are subject to mandatory mediation under the Court's existing ADR Orders.

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[5] *Limited Objection of the United States of America to Motion of Motors Liquidation Company GUC Trust to Supplement Order Authorizing Implementation of Alternative Dispute Procedures, Including Mandatory Mediation* (the "**United States' Objection**") (ECF No. 11468).

[6] See United States' Objection at 2-5 (Noting that the "United States has been and is actively negotiating to seek resolution of those [environmental claims arising in or near Onondaga County, New York], and is unaware of any other significant unresolved federal claim of any kind.")

[7] Motion to Compel at 7.

5. In any event, there is no reason why the Thacker Claim should be excepted from mediation. To require the GUC Trust to seek approval of separate mediation procedures for the Thacker Claim—procedures that would be identical to those contained in the Second Amended ADR Order—would be a waste of estate resources.

The Claimants are Incorrect in Asserting that Sufficient Reasons Exist to Deny the GUC Trust's Request in the Alternative to Now Order the Claimants to Participate in Mandatory Mediation

6. More troubling to the GUC Trust than the technical objections raised by the Claimants is the refusal of the Claimants to engage in mediation at all. As the GUC Trust indicated in its Motion to Compel,[8] this Court clearly has the authority to order mediation of the Thacker Claim irrespective of the applicability of the existing ADR Orders. As such, whether or not the Claimants insist on engaging in a tedious quarrel over the interpretation of the existing ADR Orders, the Thacker Claim should be subject to mandatory mediation.

7. The Claimants assert various reasons as to why they should not be ordered to now participate in mediation, including the assertion that the GUC Trust has not demonstrated a willingness to negotiate in good faith. To prove their point, the Claimants point out that they have already participated in a mediation with the Debtors prior to the commencement of these chapter 11 cases and, further, a mediated settlement would still be subject to certain third-party approvals. Of course, the Debtors and now the GUC Trust have successfully mediated claims that were previously the subject of unsuccessful mediations prior to these chapter 11 cases and it is not uncommon for settlements to be subject to third-party approvals. As hereinafter discussed, each of the issues raised by the Claimants is without merit.

[8] Motion to Compel at 7.

8. To further support the assertion that the GUC Trust has not demonstrated a willingness to negotiate in good faith, the Claimants indicate that the GUC Trust "offered to settle [the] $50 million [Thacker Claim] for approximately $30,000."[9] The settlement offer referenced by the Claimants was an opening offer that the GUC Trust was required to submit in accordance with the ADR Procedures prior to the inception of the actual mediation process. The GUC Trust had actually submitted an opening offer of an unsecured claim in the amount of $100,000. The $30,000 amount referenced by the Claimants reflects their computation of the pro-rata distributional value of the unsecured claim offered by the GUC Trust based on the assumption that the recovery on unsecured claims is 30 cents on the dollar.[10] The appropriateness of the GUC Trust's opening offer should be viewed in light of the fact that mandatory mediation is intended precisely to facilitate a consensual resolution between parties with unequal information or disparate beliefs as to the value of a claim. Notably, counsel for the Claimants has touted the advantage the Claimants hold in terms of familiarity with the factually intensive and complicated Thacker Claim, but do not wish to participate in a process that could create a forum to exchange information as to why the Thacker Claim should receive better treatment.

9. If the Claimants desired, they could have submitted a counteroffer in accordance with the express terms of the ADR Procedures. A large number of claims in these cases have been resolved in the offer/counter-offer stage of the ADR Procedures and mediations

[9] Response at 1,10. Mindful of Rule 408 of the Federal Rules of Evidence, the GUC Trust references settlement amounts in this Reply only to the extent such amounts are first raised by the Claimants.

[10] The fact that the Claimants are analyzing the sufficiency of a potential settlement amount in terms of its pro-rata distributional value rather than its sufficiency as an unsecured claim under non-bankruptcy law is itself troubling and an indication that the involvement of an unbiased mediator may be necessary to steer the parties to an appropriate valuation. Moreover, the GUC Trust reserves its rights to later argue that the Thacker Claimants are not negotiating in good faith to the extent they insist on payment of their claim in full without considering the distribution scheme under the Plan.

because unnecessary. Instead, the Claimants elected not to submit a counteroffer and refused to proceed to mediation. What is particularly duplicitous about the Claimants' Response is that while they blatantly violate Rule 408 of the Federal Rules of Evidence[11] in disclosing the GUC Trust's opening offer of $100,000, the Claimants fail to mention a significantly higher conditional offer by the GUC Trust that was likewise rejected.

10. As noted above, the Claimants also assert that mandatory mediation would not be productive because the Claimants had already participated in mediation with the Debtors.[12] The Claimants did not disclose, however, that the mediation took place nearly a decade ago in August of 2004. The individuals and, more importantly, the motivations and goals of the individuals that would be negotiating on behalf of the GUC Trust today would be entirely different from those with respect to General Motors Corporation in 2004. The GUC Trust is in the process of winding-down these estates. While the GUC Trust is not inclined to settle the Thacker Claim for an amount that is unjustifiable in light of the merits of the claim, the GUC Trust has absolutely no motive to delay an appropriate resolution of the Thacker Claim.

11. Lastly, the Claimants assert that mediation is inappropriate because any consensual resolution reached with the GUC Trust is subject to third party approvals, most notably by the United States. It would be disingenuous for the Claimants to suggest that False Claims Act cases prosecuted by private individuals must be litigated to conclusion because of the burdens associated with obtaining the United States' approval of a consensual resolution. The United States investigated the Thacker Claim in connection with the Thacker Litigation and elected to leave the claim in the hands of the private citizens. The GUC Trust is not aware of

[11] Under the ADR Procedures, Rule 408 is expressly applicable to settlement discussions. (ADR Procedures at 4).

[12] Response at 6.

any extraordinary issues that would cause the United States to resist any proposed settlement between the GUC Trust and the Claimants. In fact, the mediation between the Claimants and the Debtors in August of 2004 was held notwithstanding the fact that the United States would need to later approve any settlement. Moreover, it is not uncommon for a settlement to be subject to third-party approvals, as was the case with the resolution of various class-action claims that were filed in these cases.[13] Even if third-party approvals are required, there must in any case first be an agreement between the GUC Trust and the Claimants for such third parties to approve. In light of the foregoing, in the event that the Court finds that the Claimants are not currently subject to mandatory mediation under the existing ADR Orders, the Claimants should be ordered to now participate in mandatory mediation under the terms of the Second Amended ADR Order.

Reservation of Rights

12. As the GUC Trust indicated in the Motion to Compel, Section II.F of the ADR Procedures provides that this Court may impose certain sanctions against a claimant that fails to comply with the ADR Procedures, including the disallowance of the subject claim.[14] The GUC Trust does not take slightly the gravity of requesting sanctions against a claimant pursuant to the ADR Procedures. However, it has successfully sought such remedies in the past and reserves the right to seek such remedies here.

[13] See, e.g. *Order Granting Motion to Approve Notice Pursuant to Fed. R. Civ. P. 23(h) for Award of Attorneys Fees from Claim No. 51093 Settlement Fund re: Anderson Class Counsel* (ECF No. 11827); *Order signed on 5/3/2011 Granting Re: Approving Agreement Resolving Proof of Claim No. 51095 and Implementing Modified Dex-Cool Class Settlement* (ECF No. 10172).

[14] Motion to Compel at 4.

Conclusion

WHEREFORE the GUC Trust respectfully requests the entry of an order requiring the Claimants to participate in mandatory mediation in accordance with the Second Amended ADR Order and such other and further relief as is just.

Dated: New York, New York
July 29, 2013

/s/ Joseph H. Smolinsky

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EXHIBIT A

Transcript of March 1, 2012 Hearing

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 09-50026(REG)

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In the Matter of:

GENERAL MOTORS CORPORATION,

Debtors.

- x

U.S. Bankruptcy Court

One Bowling Green

New York, New York

March 1, 2012

9:45 AM

B E F O R E :

HON ROBERT E. GERBER

U.S. BANKRUPTCY JUDGE

Hearing re: Motors Liquidation Company GUC Trust's Motion to Supplement Amended Order Pursuant to 11 U.S.C. § 105(a) and General Order M-390 Authorizing Implementation of Alternative Dispute Procedures, Including Mandatory Mediation

Hearing re: Objection to Proof of Claim No. 61381 by Dimitrios Marangos

Hearing re: Motion for Objection to Claim(s) Proof of claim No. 15927 by Patricia Meyer

Hearing re: Debtors' Eighty-Third Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

Debtors' 103rd Omnibus Objection to Claims (Welfare Benefits Claims of Retired and Former Salaried and Executive Employees)

266th Omnibus Objection to Claims and Motion Requesting Enforcement of Bar Date Orders

267th Omnibus Objection to Claim(s) Number

268th Omnibus Objection to Claims and Motion Requesting Enforcement of Bar Dates Orders

Transcribed by: Dawn South, Cherri Brown, and Becky Flick

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P R O C E E D I N G S

THE COURT: Good morning, have seats, please. okay, General Motors -- Motors Liquidation Company. We have many, many people who've signed up for the phone, and we have a fair number of matters to deal with today.

Here's what we're going to do, folks. I'm dealing with the ADR matters first, and we will resolve those issues and then I will thereafter deal with the various claims objections.

CourtCall, I'm going to ask that the folks who are on the line for claims objections be put on mute until we get to those. My phone log shows Mr. Carragher of the Day Pitney firm on the phone log, and I think he's here on the environmental matters because I read his submission, I think it was United Technologies. I would like him kept live if you would, please, and the remainder of the folks should be put on mute until I get to their needs and concerns.

OPERATOR: Thank you, Your Honor, I'm bringing Mr. Carragher live now.

THE COURT: Okay. Mr. Carragher, can you hear me?

MR. CARRAGHER: Yes, I can, Your Honor.

THE COURT: Very good, okay. On ADR folks, I've read your various submissions. I have some preliminary thoughts.

I think there is no doubt that the idea of ADR as

a whole is a very beneficial one, and what we're really going to be talking about is in addition to approving the motion on patents and other things for which there was no opposition, we need solely to address some of the concerns that were articulated in the limited objections.

Some of the remarks that were made by the GUC Trust in its response lead me to believe that some of the earlier concerns voiced by the objectors, which would otherwise have troubled me as well, have been addressed, but I sense that some may remain, and at least in one case, vis-à-vis, the federal government. It looked like my earlier understanding, which was reflected in writing by I think Onondaga County, that the federal EPA wasn't going to be required to participate, may have suffered a reversal by the GUC Trust side and I need an explanation as to that.

My general thought that I want everybody to address however is if we assume, as I think all reasonable people do or at least should, that the system as a whole is salutary and we know that the ADR process has been very beneficial for everybody in the areas in which it's already proceeded, do we really have good justifications for not doing it on a level playing field?

And I particularly have concerns that I need the GUC Trust side to address, as to whether the GUC Trust should have the right to pick mediators and not -- or to

nominate them and not those on the other side, and likewise it should have the ability to pull the plug on the process and deny that right to the other side.

My tentative, subject to your rights to be heard, is that the ADR process if it's to work best has to have the confidence of everybody, and that people should have comfort that it's going to run fairly on both sides.

So although in some respects these are some fine tuning around the edges, and arguably even micromanagement, I do want to give everybody the sense that we're going to be embarking on an enterprise where everybody has confidence in it, and that's what I need you guys to help me with.

Now with that said, Mr. Smolinsky, are you going to take the lead for the GUC Trust on this?

MR. SMOLINSKY: Yes, Your Honor.

THE COURT: Can I ask you to come to the main lectern, please.

And I think I remember you folks, but before you start talking, Mr. Smolinsky, let me get the appearances on the record and then you can continue.

MS. LEARY: Maureen Leary for the State of New York on behalf of the Attorney General's Office.

MR. JONES: David Jones from the U.S. Attorney's Officer Southern District New York for the United States.

MR. LINDENMAN: Eric Lindenman, Harris Beach for

the Town of Salina.

THE COURT: Mr. Lindenman, it's been a while.

MR. LINDENMAN: Yes.

THE COURT: Okay. Mr. Smolinsky.

MR. SMOLINSKY: Thank you, Your Honor, and of course I'm aware that Your Honor has read all the papers and I won't repeat our previous -- previous papers, but I do want to perhaps give just a minute of background because I think it's helpful to try to defuse the notion that this is an unfair process that's not likely to lead to a resolution, which is a theme that came out throughout the objections.

There can be no dispute that the ADR process has been extremely successful in this case. We used it primarily for litigation claims and we started out with thousands of claims -- litigation claims in excess of $500,000. Of those we only had to designate 354 claims for ADR. That means that we were successful -- and we do have a couple of hundred claims left, including 53 claims that are still in the ADR process in the offer and counteroffer stage. So that means that we have worked diligently and quite successfully at resolving claims even before we designated then for ADR.

Of those 354 claims 53 are still in the process, there have been 301 mediations to date, and of those we resolved in mediation 289 of them.

There are ten claims that didn't settle, and I would say that I know about some of those claims and I would have guessed going into the process that we would not have settled it in ADR.

An additional two claims have not settled and are currently on appeal for defendants' judgments.

So we already won at the trial level the ADR to resolve appeal and now the appeal is going forward.

THE COURT: Pause, please, Mr. Smolinsky.

Those were actions in which the defendants' side, which would be either GM or an affiliate had won in like some state trial court but the matter was up on appeal?

MR. SMOLINSKY: Correct, Your Honor. That means that we -- even taking those two cases into consideration we settled through mediation 289 of 301 cases, which is a success rate of 96 percent.

So I could also report to the Court that the mediations have not been a free for all where the GUC Trust has simply opened its pocketbooks and given away the store. They were all done professionally, there were considerations given to hardship cases, it was done with a full exchange of information by the GUC Trust to allow the claimant to fully understand the defenses that the estate had, and there was a full sharing of information.

But the reason why in our papers we put in it some

additional language requiring the delivery of information is unlike a litigation claim where, you know, it's he said, she said, there are police reports and other documents, but calculating the damages is something which relies on a whole host of issues, what the jury is going to look like in a particular jurisdiction, how good the plaintiff's counsel is. There are a whole host of reasons.

When it gets down to patent claims and environmental claims it's usually something which is based on either a calculation in the patents side, a calculation of how many parts were sold during a given period of time, sometimes not by GM but by other manufacturers. For environmental claims there's often engineering work done that describes what kind of work needs to be done, and that's the first stage in understanding what the appropriate value of the claim should be.

So in terms of what the documents say I don't think that we envisioned that this was going to be a one-way discovery street. It was simply a way of saying to claimants, if you have information about how you're calculating your claim give it to us so we can evaluate it and we'll share our information with you as well.

Sometimes there are issues. I know that New York State has been looking for one particular document, a feasibility study that was commenced by GM with respect to

the American Axle site I believe, and in that regard the study --

THE COURT: Is that in Onondaga County or a different part of New York?

MR. SMOLINSKY: Is the American Axle --

MS. LEARY: No, I think it's in Erie County, Your Honor.

THE COURT: Out near Buffalo.

MS. LEARY: Yes.

THE COURT: Okay.

MR. SMOLINSKY: So in that case we provided the State, in fact we filed with the State way back a feasibility study, and prior to the bankruptcy the debtors had started a second feasibility study but it wasn't completed.

So there's been some talk about whether or not we should deliver the uncompleted feasibility study, and we'll get there. We will speak to the engineers and figure out how complete it is and how reliable it is and then we'll share that information. So it's not intended to be a one-way street.

So just talking about some of the objections that were made, and I think it touches upon some of your -- some of your concerns.

The unfair nature of the process. I think the

proof is in the pudding in terms of how we've conducted these ADR processes.

The need to broaden the roster of mediators. As we said in our papers, we did have at least two mediators that had extensive environmental experience.

We in the past with respect to litigation claims have worked with parties and in some cases have designated other mediators upon agreement. I think the same would hold true here. We're not going through this as we would in a typical litigation where if it settles fine, if it doesn't that's fine too, we're approaching this from a perspective of wanting to settle it.

So to the extent that there is a suggestion that there be another mediator considered we would -- we would definitely consider that, and to the extent that it made the mediation more productive we would likely go along with that.

The reason why the procedures don't say that the parties will come together and agree on a mediator is that sometimes that process in and of itself could take months and months and months and months, and a lot of disagreements and going back and forth.

So we were not intending, and I think our reply papers were quite clear on this, that we were not intending to -- to not avail ourselves of suggestions of mediators

that might be more constructive to getting to yes, but rather trying to make sure that the very strict deadlines that are in the ADR procedure that have worked so well to getting to resolutions within a reasonable period of time remains -- remains there and remains as an enforcement mechanism to make sure that we could get through these claims quickly and efficiently.

The budgetary constraints I think we addressed. We will agree to pay the mediation costs in connection with any municipally or governmental agency.

THE COURT: Pause. That's constructive, that isn't what I understood from your rely. I thought you had made that offer for New York State, but wasn't clear as to whether you made the same offer for Onondaga County and Salina.

MR. SMOLINSKY: I hadn't previously. My view on those two parties -- and I was going to get to this later -- but to the extent that New York State wants to include them in the mediation process I think that they would appear and it would be the same costs that New York is addressing. And even I think it was Onondaga County that admits and concedes that New York is taking the lead basically saying we don't want to be in a mediation without New York. And it's never been our intention throughout the ADR process to exclude parties. We've had multi-party ADRs where we've had several

claimants in the same accidents, we've had insurance companies and claimants.

To the extend New York wants Onondaga County to participate we have no problem with them attending and there shouldn't be any increased cost associated with it.

THE COURT: All right. Well, what had troubled me -- because I think you had made it pretty clear, (a), that Onondaga County and Salina would be invited to the show, and (b), that you weren't going to tag New York State with the cost. I would have been troubled if you had said that notwithstanding those things that you were going to lay some of the costs on Onondaga and Salina.

MR. SMOLINSKY: It's not the intention, Your Honor. There may be a 502(e)(1)(b) objection --

THE COURT: I have no doubt that you would address that, but of course the way you would deal with that is paying the environmental regulator, solving the environmental regulator's needs and concerns, and then taking that into account when the others are putting in a claim for what they think they're entitled to by way of, you know, a contribution claim or something like that.

MR. SMOLINSKY: Right, or objecting to this claim in this court under 502(e)(1)(b).

So in my mind I never envisioned a scenario where we would be separately mediating with Onondaga or Salina.

If that -- if that comes to pass we will pay the mediator's fee.

THE COURT: All right. By the way, have I been mispronouncing the name of the town for the three years?

MR. SMOLINSKY: You say tomato I say tomato.

THE COURT: All right. Well, we'll wait --

MR. SMOLINSKY: I think I've heard different things at this point.

THE COURT: Mr. Lindenman can straighten this out when the time comes.

MR. LINDENMAN: Your Honor, if I can interrupt I vividly remember your asking the same question at a prior hearing and someone from that town said people there differ.

MR. SMOLINSKY: Yes.

THE COURT: All right.

UNIDENTIFIED SPEAKER: Your Honor, I'm told it's Salina, but as I indicated the last time I was here, I believe the correct pronunciation is the town. It just makes it easier, so we'll go along that.

THE COURT: I'm grateful for that, folk, thank you.

MR. SMOLINSKY: Your Honor, I remember that comment and that's why I said tomato/tomato, I didn't mean to disparage the town and mispronounce its name, I knew that there was some dispute over that fact.

THE COURT: No, I thought you wanted to disparage me.

All right, continue, please.

MR. SMOLINSKY: The next category of issues revolve around police and regulatory power.

I'll make absolutely clear we're not intending to impact and impair, and our order will certainly provide that we're not seeking to take away any municipality's right to police -- to exercise their police and regulatory power. I don't think it's relevant here because these are not sites that are owned and controlled and managed by the debtors. So in terms of their claims I believe them to be simple monetary issues.

So I'm not quite sure where the police and regulatory power is invoked, but we're not seeking to alter -- alter 362.

I think the last issue that was raised by New York was that they wanted to make sure that the claims were subject to withdrawal of the reference, and I think we addressed that -- this, but let me say what our position is.

We're not trying to take away anyone's rights ultimately to seek to withdraw the reference, but we think that we should at least prior to this issue being moved out of this Court that we should at least have the time to do a consensual ADR process, not invoking Your Honor's

jurisdiction to actually try the matter, but to give us the opportunity to resolve -- to resolve the matters consensually.

THE COURT: So you're okay with the notion that before anybody tees anything up for me to decide on an issue that by way of example might include a construction of both the code and CERCLA, that at that point there would be an opportunity for someone to move for a withdrawal of the reference if that claimant thought it wanted to try?

MR. SMOLINSKY: That's right, Your Honor, we can make that clearer in the order.

The issue about pulling the plug was -- that's in the procedures, because there are situations that could occur when you're going down the process of trying to mediate a claim and you know based on the discussions that take place before the mediation starts that it's not going to be a constructive process and you're not going to resolve the claim, and the point is to not force the estate to spend the $20,000 or so it costs to actually do a mediation if it's not likely to result in any particular result and that we should be going back to the Court before we move forward.

I can't imagine that with respect to environmental claims of this nature, the ones that are represented in the court here today, that we would find that the mediation process is not productive once we commence it, but that's

the purpose for that language, and I think that that's a fair request to allow -- to force claimants to participate, but to extent that they're not participating in a way that's going to get to a result avoiding the estate's need to just spend money indiscriminately, and that's the purpose.

With respect to the federal government. The catch all exclusion, the carve-out for the federal government had been in there in previous orders and it was inadvertent that we kept that carve-out in our papers.

As a matter of fact with respect to some of the Onondaga sites New York and the federal government are both involved, and to be able to mediate the issues in Onondaga effectively we perhaps need the federal government there and present.

We -- as soon as Mr. Jones reached out to us and said, you know, what is our position, we told him that it was our desire and intention to include the federal government in the procedures, but I will say that the federal government has been extremely cooperative with us, not to say that other parties haven't, but we have resolved substantial claims with the EPA since confirmation of the case. You've seen some of those settlements lodged with Your Honor.

As a matter of fact one of the benefits of filing this motion is we've resolved a number of additional claims,

and you'll see other settlements being lodged shortly.

I'll knock on wood, but I believe that as recent as yesterday I could say that I think we've resolved all of our issues with the federal government with respect to EPA issues.

THE COURT: Including those that would otherwise be subject to ADR under this motion?

MR. SMOLINSKY: That's right, Your Honor, all environmental claims. And Mr. Jones can speak to that, and obviously there may be some additional consents and there's a procedure of lodging that has to take place, so we're reluctant to pull them out of the ADR order because we'd like to have that as a backstop in case anything happens, but the likelihood of actually mediating with the federal government is I believe remote at this point.

THE COURT: I don't know if you're the best guy for me to ask this or whether I should ask it of Mr. Jones or both of you, but do you have a sense as to how long it would take to know whether any requisite approvals could be obtained? At least in some government settlements the government has to put it out to public comment and so forth, and for lack of a better word we would know whether we need to put the federal government into ADR or whether things already in place will simply take their course.

MR. SMOLINSKY: I think I'll let Mr. Jones or

Ms. Leary answer that question from a regulatory perspective.

I would say that it is not our goal to mediate claims, just to make that very clear. Our goal is to resolve claims in advance of mediation and to use mediation as a last resort to the extent that claims can't be settled.

I've told both Ms. Leary and Mr. Jones that we want to give all these settlement discussions a good faith chance, and in fact some of New York's issues have been resolved and wrapped up in these agreements in principal.

And so I can commit to Your Honor that with respect to the Onondaga site and the federal claims that we will not designate those claims for mediation within the next 30 days and that will allow time to let these deals solidify and to get out for comment.

I can also assure Your Honor that to the extent that there is a settlement that's been lodged and is out there for comment, that we're not going to designate a claim during that process, I think that would be ridiculous.

So again, I think that the protections are in there based on those representations that the government is not going to be dragged in a mediation that's unnecessary.

And with respect to New York State over the last two weeks we've had several constructive conversations with Ms. Leary. I believe that we're speaking to her again

tomorrow, and I'm hopeful that we can make real process over the next 30 days on a number of the New York sites. That's our -- that's our goal. The ADR process is not without cost, but it's certainly cheaper than the costs of litigation.

So looking down at the various objections I think I've addressed our position on New York, Onondaga County, Town of Salina, same thing, we talked about the multi-party claims that Onondaga was concerned about not being able to participate for the extent New York wanted them to. United Technologies also filed a joinder, but I think that's in the same category as the 052(e)(10(b). And I believe I addressed your comments regarding pulling the plug, picking the mediators, and the inclusion of the federal government.

THE COURT: Okay, thank you.

I think I would like to next hear from Mr. Jones, then Ms. Leary, Mr. Lindenman, and Mr. Carragher, if he wishes to be heard in addition.

Go ahead, Mr. Jones.

MR. JONES: Thank you, Your Honor, David Jones from the U.S. Attorney's Office for the U.S.

As Mr. Smolinsky has said, we've made tremendous progress resolving claims, and as our papers said we have essentially two outstanding settlements we're working on, both in the Onondaga area. In fact just yesterday and today

we have achieved at least subject to approval a notice and comment agreement in principal on one, and we're either there or very close on the other. We're going through some intergovernmental coordination and communication on our side, that is we want to talk to the county and we have been talking to the State, that's ongoing.

So I think as a practical matter we -- I think it's very unlikely even if this motion were granted as to the federal government that we would end up in the mediation posture, and for that reason I think, you know, my concerns are somewhat certainly less -- apply with less force, but they still exist as a principled matter.

So I want to make clear that -- first that the government does -- the United States does favor mediation processes where appropriate and we don't have a principled objection to being asked to mediation claims where we think that'll be productive, but in this instance it's simply the case that we don't foresee a scenario where mediation will be necessary or appropriate as to us, and we would rather not cede the still unilateral power to the GUC Trust to push us into that scenario.

I think realistically --

THE COURT: Pause, please, Mr. Jones, because I certainly under your perspective on that, but one thing that had occurred to me -- and forgive me, I don't understand or

know the break down of responsibility between governmental enforcement on the federal side on the one hand and on the state side on the other -- but success or fail your on your end I would have thought would then bear on whether New York's needs and concerns have been addressed, and when the two of you guys, New York and the federal government, have obtained satisfaction that could -- unless I'm corrected -- have 520(e) implications for PRP's.

Am I -- that's why I care about you guys being in there or holding the flashlight in the forest for the other guys.

MR. JONES: Your Honor, you're right, I mean these are -- first off we have -- our two claims involve the Onondaga superfund site or site complex -- it's a complicated area, and we do have overlap New York State. On one of the two we serve co-trustee with New York State for natural resource damage purposes, on the other I believe it's EPA lead, but on a site by site basis EPA and state regulators will work out who plays the lead for what remediation function at what site.

Here there are quite a number of New York sites at issue in the bankruptcy that -- where there's no federal role. I -- the two deals or near deals that I see do involve at least a degree of coordination with New York State and we're going through that process, and we think

very productively and will every reason to expect success.

I mean, and Your Honor mentioned the 502 issue of other PRP's. One consideration we always keep in mind in negotiating is to -- is that these settlements are subject to lodging of a proposed settlement, a public notice and comment period, and then approval by the Court under the environmental laws as has occurred several times, and of course PRP's can come in and object and say that the settlements are unfair or insufficient.

We take pains in negotiating to try to anticipate any such possible objection and make sure that our settlement either won't trigger such an objection or would withstand such an objection, but of course if public comments come in and we've got it wrong we can revisit that.

I think the way this will play out is that we believe -- is just consistent with that. We believe we are presenting sound deals. The notice and comment period will either bear that out or won't, but if it doesn't, if a problem arises -- I mean the negotiating process has been very involved, we have had extensive technical discussions, each side has their own technical consultants, the program policy and policy people are all participating in the process as well as counsel, and in the event that something goes awry through other PRP's coming in or notice and comment that same process can continue. I don't -- I simply

don't see what a mediator would add to the process. I think it just becomes another layer of procedural complexity, time, expense for the estate, even if the government is now being excused from bearing that mediator expense, for a function that I think we simply don't need.

I mean I have a practical problem, Your Honor, which is I'm a creature of what I'm authorized to say or consent to, and I'm not authorized to consent to this application. I think I do want to acknowledge that Mr. Smolinsky has defanged a lot of the procedural problems. I think there are still issues with the sort of unilateral triggering mechanism and the limitations on flow of information that give us pause and we're not quite sure how this would play out. I mean the -- and the injunction that would be triggered by invocation of mediation also could become an impediment to resolving disputes, or I suppose possibly to regulatory action, although I think Mr. Smolinsky has accounted for that concern.

So I guess, you know, where I am, Your Honor, is I -- our expectation is that this won't be a problem because what Mr. Smolinsky has said will mean that we will simply progress on the path we've been and get deals done and be out without ever triggering this, but to me that factor is in favor of, you know, carving out or exempting the U.S. given the progress that's been made and given the lack of

need at least for a certain amount of time.

We have no problem with MLC, you know, coming back and proposing mediation and we might consent to mediation if we each agree that it would be appropriate at a future time. We're just not there yet and may never be.

THE COURT: Before you sit down, Mr. Jones. One of your concerns is on -- on what you described as limits and flow of information not just in monster cases like this one, but in practically every case on my watch where I've thought that ADR might be constructive. I've taken a hybrid approach.

History has taught me, experience has taught me that you can't mediate effectively without some exchange of information, but that the whole idea of mediation is to avoid running up what I believe, and I think many believe, is a very expensive discovery process because our discovery rules by their nature are very expensive for parties. That's why the Supreme Court has told us that we're supposed to blow away complaints at the 12(b)(6) level so people don't have to participate in discovery.

I would like to find that sweet spot to provide for the necessary exchange of information without getting into full-blown discovery. How do you think I should do that?

MR. JONES: Your Honor, this is just one person's

view, and you know, I haven't vetted any particular position, but the thing that fundamentally troubled me was that there's an obligation put on claimants to put forth their justification of their position and there's no reciprocal obligation put onto the GUC Trust to put forth its substantiation for its position as to what the valuation should be.

So at a minimum I would think simply a reciprocal exchange instead of a one-way exchange would be appropriate.

I will say -- and I think Your Honor's question goes to sort of general operation of the procedures in large part -- I will say that as to us there's been extremely extensive exchange of information and views and technical meetings amongst consultants on each side, so you know, I don't know that my concern is elusory as it applies to us, but I think there has been substantial exchange of information.

So I don't want to claim that they're playing hide the ball, but just as a structural matter it seems to me that providing for some form of streamlined exchange of information that flows both ways is better than simply putting a burden on the claimant to cough up information and then be thrown into mediation where they don't know what the GUC Trust is sitting on -- what information the GUC Trust is sitting on.

THE COURT: Okay, thank you.

MR. JONES: Thank you.

THE COURT: Ms. Leary?

MS. LEARY: Thank you, Your Honor. Maureen Leary for the State of New York and the Department of Environmental Conservation.

I -- New York wants this to work, that's the first thing I want to say, and it's important that it work if we have to do it and the expense has to be incurred.

The thing I like about it is there is a preliminary process. The problem with the preliminary process is what Mr. Jones was just eluding to, that exchange of information.

Why is that important? Unlike Mr. Jones' representation I can represent to you that there has not been the same type of exchange of information between New York and MLC or New York and the GUC Trust now. This hasn't happened. Whether that's a product of being too busy or whatever it is.

The reason it's important is -- and the problem with the procedures is they fail to recognize what I think the rules give a claimant, which under 3001(f) is quote, "A proof of claim executed and filed in accordance with these rules shall constitute, quote, prima facie evidence of the validity and amount of the claim."

If the process starts with the onerous -- well, articulated burden on the claimant, which is my view New York has already met because our proofs of claim are substantial, and there's no subsequent requirement for a substantiation of the other side's position this isn't going to work. It's not fair. And I'm not even going to get to the pull the plug. I don't want to pull the plug on that, I don't want that right, but I don't want the GUC Trust to have it unilateral did I.

I think when you're in mediation it's tough, gets hot in this kitchen, and that's why you stay, that's when things start to happen.

So I went through the order this morning, Your Honor, and I very much appreciate Mr. Smolinsky's good faith in trying to get us to the point of, you know, having all of our concerns addressed. We're not quite at that point.

Shares of the costs definitely went fairly far.

The agreement to in good faith consider a mediator beyond those listed is not quite far enough. We need some additional choices on that panel that I proposed from the United States Institute for Environmental Conflict Resolution which has a particular section that has many members in New York that's just devoted to environmental issues -- mediating environmental issues.

THE COURT: Does it have a list of people --

MS. LEARY: Yes.

THE COURT: -- who both are available to serve and who you suspect would have the requisite qualifications?

MS. LEARY: I actually have not gotten that far, there was only one name that I recognized on this list, and I can conditionally assert that they probably have the requisite experience, but one of the mediators -- and I -- we concede this in our papers -- one of the group has one case that would appear to us to also have the requisite.

So we're not tossing out some of the proposals on the other side, we're just asking for more choices.

The other areas that I don't think are resolved I think involve things like the process for withdrawal of the reference. I think Mr. Smolinsky answered that question well in terms of what should happen, whether that's actually in the procedures however is a different issue. I do not think it is.

I went through the order this morning and black lined it myself with language that I thought would be both equitable to both sides and not allow either party frankly to just pull the plug at any moment and either go enforce police and regulatory authority and come back here and object to the claim. If it's going to work you want to have those options after you've given a good faith effort to the

process.

So the other issues that I don't think are resolved and I think there is a hardship on the location of the mediator for the remaining sites. These -- the remaining sites that I think may be subject to this, there are only three or four of them, and they're -- with the exception of one -- they're in Buffalo.

THE COURT: Well, help me on this. The site isn't going to negotiate.

MS. LEARY: Correct, but the witnesses are there.

THE COURT: Well, the question it would seem to me would be whether I should be focusing on the location of the negotiators, whether -- since I haven't heard anybody say that there would be a mini-trial I'm not sure whether or not the location of witnesses make a difference -- and since I'm not sure whether anybody would be making field inspections at the premise I'm not sure if proximity to the premise makes a difference or not. Can you help me on those things?

MS. LEARY: What I thought about was I envisioned, you know -- obviously we have some in the state, some financial -- fiscal constraints -- and I envisioned availability of witnesses within the agency in the regional level as probably the most important thing to be available to the mediator, someone who had the familiarity with the contamination who'd been the project manager or coordinator

on behalf of the agency who had worked with GM during the process of establishing nature and extent of contamination. That would be an important person I think for the mediator to hear from, and for that person from Buffalo to come to New York, well, they just wouldn't be able to do it.

So that -- and maybe we could do it by affidavit or otherwise, again, trying to streamline that process. All of the documents are in Buffalo. Your Honor, I'm going to Buffalo to try to get those documents, but -- and I'm not suggesting Buffalo is the only place -- but I think New York City can't be the only place, I think there has to be some greater flexibility to talk with the mediator and the GUC Trust about what makes sense. What issues have we honed down into and what do we need? Do we need an agency expert that's not on a regional level but is in a central office location in Albany to talk about what all these kinds of sites cost when you're talking about, for example, a pump and treat system for a ground water contamination problem? Who's the best person to talk about that? So that type of flexibility is not really in the procedures order.

And I appreciate Mr. Smolinsky's concern that we don't want to devolve into months and months of talking about location or the mediator or whatever, but that flexibility seems to be something that would be important in order to make it work.

THE COURT: Are you old enough to remember all those arguments in the Paris peace talks during the Vietnam War about the shape of the table?

MS. LEARY: No, I should.

THE COURT: I'm glad to see you're not, but unfortunately I am. I'm concerned about that. I want to get you guys to work.

MS. LEARY: Yes. We want to work, we've been working, but I don't have confidence -- I don't -- as you -- Your Honor put your finger on it, I don't have confidence that this isn't just another step and we're going to end up here in a claims objection and then withdrawal the reference and have the GUC Trust really incur some costs.

If it's going to be meaningful and it's going to work it really can't look like this, it has to look like both sides are in good faith exchanging information and sitting down at the table without the back door being open. Both parties have the same rights, responsibilities, and obligations and options. That's what New York is looking -- and any party to a mediation is looking for that. I think we can get there, but again, the devil is in the details.

And I went through this order, I'd really like to go through it with Mr. Smolinsky if I thought that that would result quickly in a resolution. I don't know that it will. I'm happy to give it a try with Mr. Smolinsky, but

the one thing we need is information from the GUC Trust about why our number is wrong.

I have an affidavit attached to every single proof of claim. Business documents, documenting costs, remedial investigations, feasibility, all kinds of technical information. Why isn't our number correct? Tell me before we start this whole thing. Why? And that's the one thing on several of these sites that I don't have. I've never had it. On Onondaga we did have it, and that was a concerted effort, it was a very, very big site and we did a pretty good job there exchanging information. I will say we gave more information than they did, but that's okay, it's -- we hope that it's resolved.

That's the -- that's probably the most important thing in this whole process, Your Honor, that hey, I can tell my client they're wrong, just tell me why you think they are wrong, because I think they're right. That's what I -- that sort of back and forth is very important in the order. And clarity.

If there is -- incidentally, Your Honor, if there is some deference to 362(b)(4), the automatic stay exemption that the governmental entities are entitled to, and believe me we're not looking to exercise this, that really needs to be in your order in the case there's some explosion out at one of these sites and we really have to do something. We

can't be tied up with an injunction. I don't even think it should be called an injunction, it should be an ADR stay that the parties say we're going to -- we are going stay.

THE COURT: I'm losing you on this, Ms. Leary, because I thought their injunction dealt with pushing the claim for monetary allowance. I thought GM had taken the position or had represented to me that GM doesn't operate any of the stuff anymore.

If something that GM still holds even though it doesn't operate it starts belching stuff into the environment and you wanted to enjoin the belching or take immediate curative action that would be closer to what I would think that your 362(b)(3) rights would allow you to do, but I don't see how collecting on a monetary claim relates to that.

MS. LEARY: I think that's right, Your Honor, I think -- but I read the injunction in a far broader way, and maybe I shouldn't have, maybe it is a wordsmithing solution there. I did not -- I think I remember seeing the word "any," but if the intention is that New York will be able to operate in another realm in two ways.

THE COURT: And a regulatory realm is contrasted to a claimant realm.

MS. LEARY: No, let me make this distinction. Under 362(b)94) and the Second Circuit's rule in City of New

York versus Exxon.

THE COURT: But you said (b)(4). Did they change the numbering? Am I -- again --

MS. LEARY: I'm pretty sure it's (b)(4), but I --

THE COURT: We're talking about the police powers exception under the automatic stay?

MS. LEARY: Yes. Would you excuse me so I can get my code, Your Honor?

THE COURT: You bet.

(Pause)

THE COURT: Well, you don't need to get your book, you're absolutely right that it's (b)(4), and that somehow there's as (b)(3) in there, and maybe it got renumbered or maybe --

MS. LEARY: I think it did, Your Honor.

THE COURT: -- I just got it wrong. But in any event we're talking about the same thing.

MS. LEARY: We are, but we're talking about it in two different ways, and I want to make this distinction. Simply because the GUC Trust or MLC or GM doesn't own a site anymore is not the determinative factor about whether we can exercise police and regulatory authority as to them -- as to the GUC Trust, MLC, GM.

The first situation that we were just discussing is there's an explosion, we need to act against someone else

and we can go and do that. I read the language in this procedures to potentially reach that situation, and I could be wrong.

There's a second situation which we are also in this circuit exempted from the automatic stay in pursuing, and that is even if we are pursuing a cost recovery action under CERCLA. It's all about money. It's all about these sites. It's exactly what these sites are about. Cost recovery for environmental remediation. We are exempted from the automatic stay from commencing or continuing an action to liquidate, not levy or otherwise affect other creditors, but we can liquidate that claim in any forum that has appropriate jurisdiction outside of the Bankruptcy Court, and that's city of New York versus Exxon.

And it's --

THE COURT: What did you say after bankruptcy court?

MS. LEARY: -- I think it's a -- pardon?

THE COURT: What did you say after bankruptcy?

MS. LEARY: I think I cited the name of the case.

THE COURT: Which is?

MS. LEARY: City of New York versus Exxon, and in that case it's a CERCLA cost recovery case. A bankrupt entity asserted that the City of New York could not seek -- it might have been the State of New York -- could not seek

cost recovery, it was barred by the automatic stay because it involved financial issues of a bankrupt entity, and the Second Circuit rejected that and said, no, CERCLA's remedial processes are classically what 362(b)(4) is addressed at.

Now while the government -- and I'm now speaking, not the case -- the government cannot say, okay, now give me that money, it can still liquidate its claim. So that's why it's important to New York in terms of withdrawal of the reference.

And frankly, Your Honor, there's nowhere I'd rather be than in this courtroom liquidating my claim. I just think that's the most efficient way to do this.

Going through the withdrawal of the reference, and I could eat my words on this, but I'm being frank with you, I'm not looking to withdraw the reference, but I can't have an order or a procedures prevent me from making those decisions at a later time when facts may warrant me doing that very thing.

And Your Honor, you may -- you're leaving in 2014 or was that just when your term is up? You --

THE COURT: My term ends in 2014.

MS. LEARY: Okay.

THE COURT: I've taken no position on what I'm doing in 2014 other than the fact that I don't want matters festering until 2014.

MS. LEARY: I'm just kidding, Your Honor, I'm -- I think that it's important for New York to protect its rights under the procedures.

THE COURT: I think the circuit always has the right to decide whether or not they think I'm qualified to be renominated.

Go on, please. I don't expect you to respond to that.

MS. LEARY: But you know, Your Honor, you should definitely serve beyond 2014. So -- and I -- there's probably no one that I know that would say otherwise.

So Your Honor, might I propose to Mr. Smolinsky, I mean I'm willing to give this some time if he wants to talk about what our concerns are. I think it may be more efficient for New York to present you with an order that, you know, we feel is addressing our concerns and yet keeping both party's feet to the fire to make this work, but I think I'd like to offer Mr. Smolinsky the opportunity to, you know, talk about some or our continuing concerns. And I do think that they can be addressed from a crafting standpoint in the procedures order.

If Mr. Smolinsky wants to on behalf of the GUC Trust require New York to provide information we don't have a problem with that, but we want that same ability. If you want us to substantiate our position I don't have a problem

with that, we want the GUC Trust to substantiate its position; sort of that equal footing kind of thing, and that's what my revisions on the procedures were all about this morning when I was attempting to see how we could present something to Your Honor to sign.

THE COURT: Okay, thanks very much.

MS. LEARY: Thank you.

THE COURT: Mr. Lindenman.

MR. LINDENMAN: Your Honor, going third makes it easier for me to be briefer.

Let me just address the more colorful concern you have with regard to the Vietnam peace talks here.

I think unlike the peace talks everyone sitting at the table has a vested interest in making sure it works. I think everyone is very concerned about the costs involved of mediation or any claims resolution, and to waste time deciding on the size of the table and the shape of the table is in no one's best interest.

Speaking for the town enormous amounts of money have been spent and will be spent with regard to the claims that we have, and the less that we want to do is have an extended fight over an mediator.

But I think as the State says, it is necessary that it not be one sided. I don't want to waste time picking a mediator, I want to find a mediator and move

forward. You know, just one of the two mediators that the trust had offered. I'm sure the man is immensely qualified, but his qualifications if I recall correctly had to do with nuclear accidents, and maybe he's overqualified, maybe it's just totally unrelated, I don't know, but I don't have the information necessary to determine whether that mediator or another mediator or any other mediator is qualified.

There's a reason that mediators typically are chosen by the parties, so the parties agree and the parties have as Your Honor says, confidence in the process. And I think if the trust is the one choosing the mediator it has the potential to leave any other participant with well, you know, there's some sense of unfairness.

I think it's in the party's interest to make this work, and unlike in the peace talks there isn't a judge looking over everyone's shoulder that if it doesn't work out someone is going to have to answer your Honor's questions as to why it didn't work out, and I don't think anyone wants to come back now, in 2014, or any other time to answer your question as to why it took this long or why the costs were more than they should have been just to select a mediator let along the process.

So I think that while I understand the concern not having the ability to select the mediator should not be outweighed by moving it forward as quickly and efficiently

as possible in terms of cost.

THE COURT: Pause, please, Mr. Lindenman.

As if I were inclined to say that folks other than the GUC Trust should have the right to nominate mediators or as a possible variant of that designee commonly respected mediation lists from which the mediator would be chosen, could that be done quickly enough so that it wouldn't put us in a Paris peace talks mode?

MR. LINDENMAN: I have to think, Your Honor, that because it's in everyone's interest to move this along, it's been a long time already, that the cost of going back and forth, even -- literally even just attorney costs, dollars spent on the phone and looking and reviewing is wasting time and it's wasting money.

I think that there are enough -- as Ms. Leary said -- there are enough experts out there and an access to enough information that the parties should be able to do this quickly. Again, it's the incentive to do it that matters.

THE COURT: And help me get a better sense of what you mean by quickly. Are we talking about a week, two weeks, three weeks? I would hope it would be less than anyone of those.

MR. LINDENMAN: Not having undertaken the review and the research into it I can't speak to it, but I have to

think that there is enough information to do it quickly. I just -- I don't feel comfortable being able to put a particular time frame on it, but I don't think it's something that Your Honor would consider to be an unreasonable amount of time. We want to move it forward. I just -- it would be remiss of me to suggest that we could do it in a week or in two weeks. I just don't have the information in front of me to know that. But I just know the incentive just has to be there for all of the parties to do it quickly. And if we can't resolve through discussions and settlement and what have you that we have an ability to move quickly. It's sitting there.

You know, with regard to the town, you know, the work needs to be performed, it needs to be taken care of, and every day that this process goes on longer there's more expense for my client, there's more expense for the town -- for the County, there's more expense for the trust. There just is a limited pool of resources here and it makes no sense to further delay.

Which does add to the concern that Ms. Leary raised is, you know, this has to work because I don't want to come back to the Court and the say, well, you know, we tried but it didn't really work, the mediation process or the settlement discussions that took place before that because then we're wasting more time and we're wasting more

money.

The cost compromise that Mr. Smolinsky raised certainly is important to us. We also had the impression that New York State would be excepted from that, but not the town or the county. So knowing that we're part of the process and we won't have to endure those costs is a big important issue for the -- for the town.

The issue of discovery is also vitally important to the town. We have provided similar to the State, you know, enormous reams of paper with regard to our claims. The claims have never been objected to, they're never been addressed by the debtor or the trust, it just has been there. And as Ms. Leary said, tell me why it's wrong? We've asked, you know, during the course of settlement discussions without going into specific details about numbers or what have you, they said, all right, we'll offer you X dollars. I said, well, why? You know, someone came up with that number, what's the background for it? We've provided you with information and documents and so on, tell me why your number is right and we're wrong? And we haven't received anything. And if this is what's going to happen in the ADR process then we're wasting our time.

We need to know the basis for their settlement offer for instance because maybe it does make sense, maybe it's not worth spending even a dime on ADR and we'll just

take the offer, but we don't know, and we have to be assured that we're getting information pursuant to settlement discussions and then going forward as part of the mediation process, otherwise we can't know where we're missing the boat here on our claim, and maybe there is some area where we can compromise, and maybe there is something that we can deal with during the course of mediation or preferably not even get to the mediation.

I believe, Your Honor, that all of the other issues either were resolved by Mr. Smolinsky or have already been discussed by Mr. Jones or Ms. Leary, and along with what I've just discussed I believe that addresses all of the concerns that the town has.

THE COURT: Okay.

MR. LINDENMAN: Thank you.

THE COURT: Thank you. Mr. Carragher, would you like to weigh in on this?

MR. CARRAGHER: Your Honor, this is Dan Carragher on behalf of United Technologies.

Your Honor, you addressed concerns raised by the State of New York, which is undertaking the clean up then I don't have anything else to add to this discussion.

THE COURT: Very well. Thank you.

MR. CARRAGHER: Thank you.

THE COURT: Mr. Smolinsky, reply?

MR. SMOLINSKY: Jeff Smolinsky, Your Honor.

We've had over 70,000 claims filed in this -- in this case. We have about 1300 left, albeit perhaps some of the most difficult once. We've resolved over 30,000 -- reconciled over 30,000 claims since confirmation.

In terms of sharing information to get to the resolution of these claims in a case of this size with these number of claims there has to be a sharing of information.

I think Mr. Jones is right in terms of sharing information, I think Ms. Leary is right about Rule 3001, and what 3001 says is that initially the claimant has the burden of proof to come in and demonstrate why the calculation of damages is correct. That's what we're seeking. This provision was not meant for Ms. Leary, this provision was meant for a patent claimant perhaps who hasn't demonstrated how their $100 million claim was calculated.

Ms. Leary did put in declarations with her proof of claim, and what's interesting about that, this is not a level playing field in a typical litigation where you have both parties who can either share information or not, our goal is to resolve claims. So once the claimant puts forward the information by declaration or otherwise which shows how the claims were calculated, how the costs were incurred, how the costs are going to be incurred then the burden shifts to us, and we know that if we go into court

either here or in some other forum we're going to have to dispute those claims, and the burden is going to be on us to prove that their numbers are not correct.

So the notion that we're going to prepare for mediation, we're go to do all the mediation statements that we have to do as part of this process and not put forward why it is that their calculations are incorrect would just lead to a failed mediation, and that's not what we're here to do.

Our goal once they give us the information is to push back and demonstrate why those numbers are too high or inaccurate with every bit of information that we have at our ready. Because we know that if we don't settle that claim in mediation it's going to go to a court where it's going to be our burden to prove that those numbers are not correct. So we're going to have that burden any way.

And that's the good thing about a mediation. If you can't settle it otherwise you have to actually sit down with a mediator and look them in the eye and explain to them why your position is correct. And if you don't explain why your position is correct that mediator is going to look back at you and say, I don't understand. I don't understand why their numbers are -- shouldn't be taken as valid.

So that's the explanation for why it's crafted in such a way. We didn't want to hold up mediations by virtue

of obligations to deliver things that haven't been created yet or are incomplete.

As Your Honor noticed this is not about doing all the discovery and then going into mediation like it may be in another litigation, this is about them sharing the calculation of damages and us responding with whatever information that we have. And frankly, if we don't have any information that would support a lower number we're going to assume that the Court is going to find the same way.

In terms of the mediators and the location of the mediators let me put on a -- let me just lay out a proposal. I will not take up Ms. Leary's offer to draft the order, but I will commit to working over the next week -- let's say through next Friday to work with Ms. Leary and others to refine the language in such a way that it's acceptable and we can settle an order after next week if there are still issues that remain outstanding.

To the extent that Ms. Leary or anybody else wants to propose mediators during that week we can consider adding that to the mediator's panel as part of the order.

I will say that -- that if the mediator proposals are going to be mediators in Albany that derive 75 percent of their income from working with the state governments that those things are not going to be acceptable to us because that would -- that would create a situation where there

might be perceived by us which would affect the mediation, but otherwise I see for reason other than expense as to why a suggested mediator would not be acceptable if they're knowledgeable and otherwise unconnected to either party.

With respect to the pulling the plug, and it harkens back to the days of confirmation where frankly I still don't understand some of Ms. Leary's arguments at the confirmation hearing about why claims reconciliation was not subject to the jurisdiction of this Court, but I think she answered the question on pulling the plug.

To the extent that -- that she believes that the State can at any time decide to liquidate the claim in some other court then it should be fair game with respect to our pulling of the plug.

I am prepared in the case of the Onondaga sites to commit that to the extent that we commence mediation that neither party would have the right to terminate that mediation until we complete that mediation. I'm happy to commit to that because I know that in that -- with respect to that site we have no alternative other than some expensive litigation.

THE COURT: Pause, please.

One thing that I'm toying with, and it's still jump ball and I'm always reluctant to talk about musings, is to require each side to participate in the mediation for a

minimum amount of time to see if you can make it work or not after which both sides would have parallel or congruent rights to thereby say it's hopeless.

In the context of the mediations that you've had, which are in a different area or based on your sense of what's going to happen here, do you think there would be a time for which such a concept would be practical? And if so, like what kind of time are we talking about? Like say three weeks or five weeks or six weeks or whatever to see if you could make it work after which I would then have equal rights on either side to say it ain't gonna (sic) to work, we want to go back into the litigation room.

MR. SMOLINSKY: The problem with scheduling, Your Honor, and coming up with a firm deadline like that is that things happen outside of our control.

One of the reasons why the first New York settlement stip was not approved timely was that unfortunately Ms. Leary's father passed away in the summer, and so there are things that happen that if you agree to a tight time frame you may not be able -- you're going to actually impair the mediation process by allowing someone to pull -- pull the rip cord prematurely.

I don't know if a time factor is the right approach.

THE COURT: Suppose it were modified to be a

conceptual thing where each side would have a prima facie parallel obligation to continue, each side would have the same right to terminate, and if there were circumstances of the type you talked about either side could arrange for a conference call with me to say we should do it sooner or later?

MR. SMOLINSKY: I think I would prefer that, Your Honor. So in other words with respect to the New York State mediations -- ADR process I should say, to the extent that either party feels bereaved by the process that we can arrange for a chamber's conference for effectively authority to terminate the injunction and allow other proceedings. I think that would be fine.

I'm reluctant to include it with respect to Onondaga County and Salina because we do have tight time frames, we want to close out the environmental category of claims, and to the extent that the claim is otherwise subject to disallowance under 502(e)(1)(b) I think we should have the right, even though they're participating in the mediation but it hasn't been designated by us for mediation, but they've been invited by New York State, that that shouldn't bar our ability to go forward with a claim objection.

THE COURT: Of course that is complicated by the fact that I -- as I mentioned in one of my questions -- I

don't remember whether it was to Mr. Jones or Ms. Leary -- once the environmental regulator makes progress either by agreement or by the litigation process and the environmental regulator's claims are addressed in some satisfactory fashion, that has a significant effect on what 502(e) rights are. Because if you write out a check to the government that affects what the PRP's rights are and will -- and if the PRP decides to write out a check and pays on the check -- unless you disagreed with my ruling on Lyondell Chemtura -- to the extent that the PRP has written out a check that becomes an allowed claim and no longer contingent.

MR. SMOLINSKY: And that's exactly the reason why we would want to be able to file our 502(e)(1)(b) objections, we wouldn't want to be barred. Because if for example there's mediation that resolves not only our obligation but also the Town of Salina, Salina could write a check that day and it would all of a sudden become a real obligation that has to be allowed.

THE COURT: Yes, sir, but conversely the amount of the check that Salina writes out could be influenced by the amount of the check you're writing out to New York State or the EPA.

MR. SMOLINSKY: It could be. I don't -- I'm not looking for an advisory opinion, but if you read the Chemtura decision carefully I don't believe that it ever

says that allowance of the regulator's claim is a precondition to disallowing a claim under 502(e)(1)(b). I'm not sure that I ever says that there actually has to be a claim filed by the regulator in order for that claim to be disallowed if it otherwise meets the requirement of 502(e)(1)(b), that it's a co-liability and it's contingent.

But so I don't know that -- I don't think that there's any bar to making us wait to object to those claims until such time as the New York claim is resolved.

THE COURT: Uh-huh. Go on.

MR. SMOLINSKY: But perhaps we can work out with Ms. Leary the language that would insure that we won't pull the plug and they won't pull the plug, because I don't think that there's any need to, and certainly we wouldn't want a situation where they exercise rights under CERCLA during a mediation. So maybe we can work out some language on that.

THE COURT: Okay. Continue, please.

(Pause)

MR. SMOLINSKY: I think that's all I had, Your Honor.

I think that we've made some productive concessions prior to and at this hearing. It's -- I think Your Honor may want to rule on some of the matters, but we'd be prepared to work over the next week to try to get to a consensual order.

THE COURT: Well, my mind -- and I'll give you guys once last chance to be heard -- is to rule on concepts and then to ask you guys to try to draft a consensual order consistent with the concepts that fleshes them out in a way that best meets both sides needs and concerns.

Given that risk or possibility do you want to say anything more before I give the same offer to your opponents?

MR. SMOLINSKY: No, Your Honor.

THE COURT: Okay. Does anybody want to be heard on whether they're troubled by that concept? Apparently not.

Oh, Ms. Leary, I spoke too soon.

MS. LEARY: Your Honor, I just wanted to present a point of clarification on the strategy that was just articulated by Mr. Smolinsky on --

THE COURT: Come to the main mic if you would, please, Ms. Leary.

MS. LEARY: Having this information I didn't want to, you know, deprive either you or Mr. Smolinsky of it, but the Town of Salina has already written a check. I mean they are operating as a regulator in the Town of Salina landfill context under a State assistance contract.

So that there's a complication to the strategy that I think in terms of Chemtura and Lyondell I did not

want the Court to think that they were just another 502(e); they're not. So --

THE COURT: Well, to the extent that Salina wrote out a check to either you or the EPA or to remedial contractors, I would have thought that under Chemtura Lyondell if they showed the canceled check that makes those 502(e) issues go away, but I'll give people reservations of rights if I'm mistaken on that.

MS. LEARY: That -- I just wanted to clarify it for the Court, that's all. It just -- there seems to be a misinterpretation of their role as potentially a co-liable party and the State does not view them as such.

THE COURT: I guess the question I had, and if this is so then I welcome your clarification, is I thought they had possible future checks to write out in the future.

MS. LEARY: That is true.

THE COURT: And that raises 502(e) issues.

MS. LEARY: That -- that is true, but I believe under the contract the dollars are -- it's either 90/10 State Salina or 75/25.

UNIDENTIFIED SPEAKER: 75/25.

MS. LEARY: 72/25. So the majority of the dollars are State dollars.

THE COURT: Uh-huh. Okay.

MS. LEARY: So I just wanted to clarify that.

And I -- I actually was not clear on your question about the conceptual --

THE COURT: I'm going to rule on concepts.

MS. LEARY: I'm okay with that, Your Honor.

THE COURT: And then I'm going to want an order consistent with my concepts. I do recognize that sometimes the devil is in the details and my concepts may not get us across the goal line, but after you sit down -- assuming nobody else wants to be heard -- I'm going to tell you my rulings on the concepts.

MS. LEARY: Thank you, Your Honor.

THE COURT: Okay.

Mr. Smolinsky?

MR. SMOLINSKY: Just one quick thought on the Salina comment that was just made. Obviously a precondition is also that you have to be co-liable, which means that the amounts that Salina is incurring has to overlap with obligations that we would otherwise have. The Onondaga site is very complex and there could be different responsibilities with respect to different sites.

THE COURT: And you're not looking for me to rule on that today, but you'd like a reservation of rights on that issue.

MR. SMOLINSKY: That's correct, Your Honor, and that's exactly -- the issue of the 502(e)(1)(b) continuing

to potentially increase is the reason why we -- exactly why we need this ADR process in place, because every day that we don't resolve these environmental claims leads to potential additional exposure for the estate, and I think that was a great ending comment, because it shows the importance of this process.

THE COURT: Fair enough.

All right, everybody sit in place for a minute.

(Pause)

THE COURT: All right, folks, the underlying concept of course that the ADR process is in everybody's interest is recognized by all, and the motion as a whole is granted in concept with my only rulings being my nuances, vis-à-vis, it's execution to deal with the limited objections that were filed. And for the avoidance of doubt it's granted vis-à-vis the non-objectors, and we're talking only about what one might call tweaks or nuances, vis-à-vis, the execution of the motion.

I've identified and I'm going to permit you all to identify any issues that I've overlooked, are nine areas where there are differences in perception as to the execution, and I'm going deal with those pretty much in the order in which I have them on my list, which is not congruent with their levels of importance.

First of all, vis-à-vis, the duty of the federal

government and/or its agencies to participate.

I'm going to in essence deny without prejudice the duty of the federal government to participate for a limited period of time to allow its settlements which seem to be so far down the road to either bear fruit or fail. And my thought on that is for a period of 45 days, which can be shortened or extended for cause upon no more than a telephonic conference call with me.

From time to time you're going to hear in this that I'm making myself available for conference calls. My presumption is, vis-à-vis, any of such calls that they would be telephonic but on the record with any party having the right to suggest that the on the record portion be waived, but it would be waived only if all parties to the call consent to it being waived. The idea is to put money into the pockets of creditors and/or taxpayers and to minimize the burdens associated with resolving disputes, but to give you a mechanism for resolving disputes if you think that's necessary.

If the efforts now under way by the federal government indicate that we do still need the federal government to participate my ruling is that the federal government will have to participate, but it should be given a fair shot at avoiding the need for it to do it if either within those 45 days or a reasonable time thereafter it can

obviate the need to do so.

Turning now to the remainder of the parties, and I have a similar but slightly different thought between those remaining authorities who are governmental entities on the one hand and Mr. Carragher's client. Mr. Carragher has the misfortunate of representing the only client who's not on a public fisk (ph).

First, all parties will have the right to participate insofar as the same sites are involved. And I must say that although I tried to read the papers with as much care as the circumstances permitted I'm still not clear on how many different sites in New York State are involved, although I do understand that everything that is now the subject of this motion is located within New York State.

We now have consensus that if by way of example a particular site involves not just New York but the Town of Salina, United Technologies, and so forth, that all would be allowed to come to the table and negotiate at that time. I not only permit that I would prefer that.

On the matter of cost sharing associated with the mediator who's going to be mediating, vis-à-vis, that site, if I heard Mr. Smolinsky right he's now agreed that just as he wouldn't make New York State pay for that he wouldn't make Onondaga County, Salina pay either. If it's no material incremental cost to not stick Unit Technologies

with the costs even though it's not on the public fisk, I would prefer it, but if the State wants to tag United Technologies with some portion of the cost, recognizing it's giving a free ride to the others, within reason I guess I'll let it do so.

I don't think I need to rule on whether the federal government would be tagged with those costs. Everybody on this planet who's been in the case for the last two and a half years knows that the federal government has already written out its share of checks, but you've got a reservation of rights on whether you want to stick the federal government with costs if it ultimately gets to that point.

I am however going to give you an advisory opinion that I'm sympathetic to the federal government's position in that regard, and given the difficulties of the political process and political controversy involving any time the federal government has written out a check to aid the automotive industry I do have a certain sympathy with the federal government on what it's already done.

Right to withdraw. I think the right to withdraw should be parallel, I don't think it should be one sided, but I do believe that both sides should be obligated to give it a good fair shot to make it succeed before anybody should exercise their withdrawal rights.

Consistent with the colloquy I had with Mr. Smolinsky I don't think it's productive to set a particular time by my ruling today with respect to when each side could withdraw after its thrown up its hands and come to the view that's it's concerned that it's a waste of time. I would prefer to have the loosey-goosey mechanism that I discussed with Mr. Smolinsky where it is understood that there would be a right to withdraw when there is a view that it's going to be hopeless, that the right apply to both sides, but that it should be based on some kind of articulated cause which could be explained to me at a conference telephone call at which time I could then provide the green light. I don't want to impose a particular time period for the reasons Mr. Smolinsky articulated.

Choice of mediator. As the Second Circuit speaking through Judge Friendly said in the Ira Hop (ph) case back in the '60s, the process of bankruptcy must not only be right, it must appear right, and people need to have confidence that the system is fair and that it's not tilted in favor of one side or the other.

While that principal was articulated in a broader context it's particularly clear -- or particularly applicable when you're talking about mediation in which both sides have to have confidence that they're engaged in a fair process, because ultimately mediation is consensual and it

works best when people believe that it's fair.

Therefore, I'm ruling in concept that the counter-parties to the GUC Trust or the claimants side must be given a reasonable opportunity to nominate new mediators or additional mediators either by reference to a list that is commonly respected with the environmental remediation industry or by named people whose curriculum vitaes can be examined, but the process can't drift.

So you are to agree, if you can, on either additional people who can be added to the list or additional folks who can be considered eligible with those nominations to come forward within a fixed period of time, and I'm thinking two weeks subject to extension for cause, but you've got to give me a reason why two weeks ain't enough.

I am not close enough to environmental matters -- even though I've been asked to rule on a number of environmental things -- to have any knowledge as to who is respected in the field and who isn't, but I am ruling that the claimants don't have to simply accept the names that the GUC Trust nominated, and that if they can do it in a timely way they're allowed to put their own nominations forward.

Location of mediation. As I said in colloquy with somebody, I think it was with Ms. Leary, and to this extend I'm overruling her objection in this regard.

The site isn't going to testify in an ADR process.

It is very rare in my experience that mediators even take -- of course they're not taking testimony -- comments directly from witnesses, but I don't rule that possibility out. If the principal negotiation -- if it's going to be principally a negotiation I think it's going to give us most bang for the buck if it takes place in New York. If there -- and by New York I mean New York City. If there is a reason why we need some kind of local presence in Buffalo, Syracuse, somewhere up state I think the issue is best addressed then, and you guys may come to the view that it's still best to have it in New York City, but it's cheaper rather than dragging a bunch of people up state to simply pay for a particular person to come to New York.

I don't want to micro manage that, but my concept is that the presumption is that it's going to be in New York and that I think most players at the table can appear in New York at least on the negotiating side, and I'll jump off the bridge of cost for anybody else who should be there, if and when that's really perceived to be necessary. We're going to do it in New York.

On withdrawal of the reference. I don't think I have the power nor should I weigh in on the wisdom of a withdrawal of the reference, although I assume the District Court judge who is asked to do it if he or she ever does knows the law as well as I do, which is that not every

matter that involves consideration of non-bankruptcy federal law warrants withdrawal of the reference, but only those that require a material consideration of the non-bankruptcy law, which case law has said is for the most part cutting issues rather than routine applications of the non-federal law.

But be that as it may I am not going to take away the right to move for withdrawal of the reference, assuming I had the power to do so, but do believe I have the power to impose modest restraints on the timing for any such request.

For sure I'm telling you that I'm not going to decide any issue that could be subject to withdrawal of the reference before giving people who would have the right to move for withdrawal of the reference an opportunity to make such a motion, but as we're going to deal with in the injunction part of this decision I think both consideration by a Bankruptcy Court and by a district judge needs to await giving the flowers in the garden a fair amount of time to bloom in the mediation process before we get into a litigation mode either here or in the District Court.

So that brings us to the injunction. I am going to issue an injunction that says that the parties shall be enjoined from litigating before me or any higher court while the ADR process is ongoing, and then it's going to have a proviso that says that notwithstanding the foregoing that

nothing in this order shall prohibit any entity that has 362(b)(4) rights from exercising its police powers.

I am not going to decide today what that means in practical terms, although I do believe and you're going to have to convince me otherwise, that anything to recover on anything that is the subject of existing claims is not a 362(b)(4) issue.

If Ms. Leary unfortunately encounters an explosion of the type that she mentioned she's got a reservation of rights on that. If she's talking about collecting on the claims that she's already filed -- and I got a sense without being totally clear that she may be part of the negotiations with Mr. Jones -- this issue may go away, but if there's something that comes up that invokes 362(b)(4) issues that isn't the subject of pending claims the legislative history of the order is that if it's a genuine 362(b)(4) issue she's going to have the rights to proceed to address her needs and concerns, but if it's an effort to collect on claims already filed then we're still talking about going through the normal claims process.

(Pause)

THE COURT: So for the avoidance of doubt if we're talking about claims that are already filed if they're not resolved consensually then they are going to be subject to ADR and the injunction will prohibit New York State or

anybody else from moving to withdraw the reference for that period of time during which ADR is under way.

When it comes to an end New York or anybody else will have the right to move for withdrawal of the reference.

As further clarification of my thinking in this regard I disagree with New York State's contention that routine claims allowance matters are not core, whether or not they involve consideration of non-bankruptcy federal law.

I think claims in the Bankruptcy Court are the paradigmatic example of matters that invoke the in rem jurisdiction of the Court and that bankruptcy judges constitutionally are empowered to decide. And I do so because they're claims, not because they're administration of the estate, a matter which has a certain elasticity to it as to which I have some concerns as to their scope when you get into claims allowance matters.

But claims allowance is if anything is left for bankruptcy judges to do in this world, what bankruptcy judges are allowed to decide, and if not then I don't need to wait until 2014, I'll quit tomorrow.

The hardest issue that you guys raise before me is on information sharing, but it's hard at the edges; it's not hard on the more fundamental points.

Each side is to tell the other side what its

position is and why. It's also to provide to the other side information reasonably necessary to back up the basis for what it tells the other side, and this is either at or before the mediation.

I am however bringing to a halt, to the extent that you haven't already voluntarily agreed to that, exercise of traditional discovery mechanisms.

The whole idea of ADR is to protect both sides from the costs and expenses associated with discovery, and if there's something in the grayism where anybody believes that the other side hasn't been satisfactorily forthcoming in explaining its rationale for its position or for that matter what its position is arrange for a conference call with me.

But the idea is as I articulated to Mr. Lindenman, finding that sweet spot where we've given the parties enough information to allow ADR to succeed on the one hand without subjecting everybody to the very extensive costs that are associated with discovery, particularly in the environmental area.

Not by way of your argument, are there any of the areas for concern that I haven't addressed on -- addressed one way or the other?

MS. LEARY: I have two questions, Your Honor.

On the injunction prohibition that would prevent

withdrawal of the reference during ADR would that similarly apply to the GUC Trust enjoining them from asserting a claims objection on the claim prior to ADR being completed?

THE COURT: Yes.

MS. LEARY: And the second question I have, I probably wasn't very clear in my presentation, but in discussing 362(b)(4) it is not the State's position that we would be entitled to collect on a claim asserted before this Court, it was that we are entitled to liquidate our claim in another forum and not collect. There's a very bright line in New York.

THE COURT: I understood that point you made --

MS. LEARY: Okay.

THE COURT: -- Ms. Leary, you made it very clear the first time.

MS. LEARY: Okay. I --

THE COURT: But I am going to give your opponent or opponents, which most likely is the GUC Trust, an opportunity to be heard before me if you decide to go into another forum on your 362(b)(4) rights, because I am going to decide, not some State Court, what 362(b)(4) covers and doesn't. Frankly, I believe that I have a better understanding of 362(b)(4) law than somebody might in some supreme court in some county in New York City or up state.

MS. LEARY: And that would be on a lift stay -- in

a lift stay context?

THE COURT: Essentially, yes.

MS. LEARY: Okay.

THE COURT: Or for a declaratory judgment that you don't need relief from the stay, because 362(b)(4) says that you have the power to do what you might think you might want to do.

MS. LEARY: Thank you, Your Honor.

THE COURT: Okay. Mr. Lindenman?

MR. LINDENMAN: Your Honor, just one question concerning the mediator.

I understand that we'll have the two weeks to add names into the pool. Who ultimately makes the decision as to which mediator? I don't think that was addressed here.

THE COURT: Well, I'm hoping that you can reach consensus on this. In most of my mediations the parties and not the judge decides that.

MR. LINDENMAN: Absolutely, Your Honor. The way it's currently drafted I just don't think it -- to me it wasn't clear.

THE COURT: I wasn't clear, I was intentionally not clear.

MR. LINDENMAN: Okay.

THE COURT: And the reason for that is because I'm hoping that after you nominate your nominees when you put

your noodles together you're going to reach a person who's satisfactory.

When my back has been against the wall one or two times in 11 and a half years I've chosen a mediator, but I cannot think of a single time in which I've allowed one side to dictate a mediator to the other side because that's an invitation to -- I won't say disaster -- but it raises material risks that the mediation will ultimately succeed.

MR. LINDENMAN: Thank you, Your Honor. Because it certainly was the antithesis of the fairness that you had started that section with, so I want to be clear that you're intentionally leaving open who decides at this point. You're not -- in other words it's not going to stay the way it is currently that the GUC Trust --

THE COURT: I have a strong reluctance to allow one side to dictate the mediator to the other side.

MR. LINDENMAN: Okay. Thank you.

THE COURT: But I guess if that sorts itself out I'll hear more about why you guys couldn't agree, and then if there's still an impasse I'll deal with it, but I'm hoping that ain't going to happen. The understand lying concept though is that neither side can shove the mediator down the other side's throat.

MR. LINDENMAN: that's perfect, Your Honor.

THE COURT: All right.

MR. LINDENMAN: Thank you.

THE COURT: Mr. Smolinsky?

MR. SMOLINSKY: Thank you, sir. I just have three -- three points or questions.

First of all, what we tried to do in our order was actually amend the existing ADR order, and since those procedures that have been in place are tried and true we have panels of mediators, they get to pick who the mediator is off of the panel.

For example, I'm reluctant to revise the whole ADR procedures with respect to everyone, and I wonder whether it would be --

THE COURT: Well, my point was to deal solely with the environmental claims.

MR. SMOLINSKY: Okay, that's --

THE COURT: I'm not asking you to reinvent the wheel on matters that weren't up for consideration today.

MR. SMOLINSKY: Thank you.

Obviously with respect to choosing the mediator the current procedures as I said says that the other side, the claimant gets to pick who the mediator is. Obviously we'll work to fix that along with giving them the opportunity to suggest mediators. They can't suggest them --

THE COURT: I didn't follow you. I assume you're

now shifting to the environmental mediation --

MR. SMOLINSKY: Yes.

THE COURT: -- rather than tort litigation mediation. But I thought your opponent's concerns was they didn't like having to choose amongst a panel that you would designate and only had two names in it that they weren't yet comfort.

MR. SMOLINSKY: Yes, so we'll change the entire procedure so that --

THE COURT: Okay.

MR. SMOLINSKY: -- they don't pick and we don't select the panel.

The last issue is -- I assume it's not an issue -- you talked about a telephonic conference call to for example shorten the time or lengthen the time. I just wanted to make sure that Your Honor doesn't have a problem with any ability, for example, with the federal claims to just agree with the EPA that the time is shortened or lengthened, that we don't have to come back to the Court if there's an agreement.

THE COURT: No, my view of telephonic conference calls was to help in dispute resolution, and the more you guys can make disputes go away or agree upon things on your own the better I like it.

MR. SMOLINSKY: Thank you for your clarification.

THE COURT: Okay.

Ms. Leary?

MS. LEARY: I'll just discuss with Mr. Smolinsky, I have a -- I'm not understanding what you're saying about the mediators, but I think we can talk about that. I'm pretty clear on what you said, Your Honor.

The one question I have and this was in -- I believe it was in my papers, I hope it was, I didn't raise it in my argument earlier, but of the potential -- and I hope it's only three or four sites that will remain because we are still in active discussions on the remainder of our sites, so we're talking about a universe of three or four, those three or four sites are significant from a dollar standpoint from a complexity, technically, environmentally from that standpoint.

One thing that we do not want to receive, because it's just me, are three or four notices that all of them are going into mediation. We just don't have the resources to deal with this, so I need some good faith understanding from the GUC Trust that we are not going to be bombed as we otherwise would be in a discovery context trying to justify three or four sites at one time and provide information on those three or four all at one time in the short time frames that the procedures order allows.

My suggestion in fixing this was to allow one to

proceed during that abbreviated time frame to ADR and then know or not know and then serially have the next one come up.

This is a resource issue, Your Honor, and I know that everybody is in a big hurry, hopefully we will get these resolved, but I have vulnerability because those three or four sites present a formattable challenge in the context of the procedures to do all at one time.

THE COURT: Well, rather than make Mr. Smolinsky respond now why don't we simply provide -- we all Mr. Smolinsky, we know he's an honorable guy, and if you feel like you're being double or triple or quadruple teamed then you can pick up the phone firsthand.

MS. LEARY: That sounds good.

THE COURT: And then if that doesn't work to me.

MS. LEARY: Thank you very much, Your Honor.

THE COURT: Okay. All right, anything else, anybody?

Here's what we're going to do. Obviously this was a lengthy argument, but it was important, very important. We're going to take just a five-minute recess. I would ask CourtCall to keep all of the others on the phone, to unmute their lines during the next five minutes, then we're going to resume at a quarter to 12:00 in which we're going to take the claims objection issues in the other matters on today's

calendar.

Those who were here solely on environmental matters are excused if they wish to be.

MR. LINDENMAN: Thank you, Your Honor.

THE COURT: Thank you.

MR. SMOLINSKY: Thank you, Your Honor.

MS. LEARY: Thank you, Your Honor.

(Recess at 11:41 a.m.)

THE COURT: All right, we're continuing, and we now have a largely emptied courtroom, and I'll hear the matters involving the claims objections and anything else we have. At the lectern.

MR. GRIFFITHS: Your Honor, good morning, David Griffiths of Weil, Gotshal & Manges for the debtors, the post effective date debtors and the Motors Liquidation Company GUC Trust.

THE COURT: Okay, Mr. Griffiths.

MR. GRIFFITHS: With your permission I'll be presenting items 4 and 5 on the agenda --

THE COURT: Sure.

MR. GRIFFITHS: -- which are the 83rd and 103rd omnibus objection to claims which relate to welfare benefit claims or retired and former salaried and executive employees.

THE COURT: All right, Mr. Griffiths, I need you

to just speed a little bit slower and to keep the microphone close to you.

MR. GRIFFITHS: Yes, sir, of course.

Your Honor, before we start with respect to those omnibus objections we just wanted to bring to your attention that we have approximately 100 claims -- replies that we -- or responses that we've received from former employees. Out of the approximately 3,000 claims that have been objected to those will be brought before your attention in the coming months. We plan to schedule a number of hearings in April and May to handle these, and we just request that if we schedule too many to be dealt with at any one hearing that you just let us know and we can reduce that number.

THE COURT: Certainly.

MR. GRIFFITHS: Before I start I'd like to thank the employees on the phone this morning for their patience both today and in bringing a -- in allowing us to bring these replies to your attention.

Your Honor, the omnibus objections that are before you today are of the type that have been dealt with at previous hearings. Most notably on July 27, 2011, September 26, 2011, and January 18, 2012. I'd like to designate as part of the record for my appeal your prior rulings with respect to these omnibus objections and claims which are similar in form and substance to what we have

before us today.

THE COURT: Granted. Anything that I've issued an opinion on either in writing or by a dictated decision at the conclusion of an argument will be deemed to be a part of the record on these proceedings.

The principals of law of course while not binding on any litigant are precedent, what we call in Latin stare decisis, but each individual's facts of course are considered unique to that particular individual.

MR. GRIFFITHS: Yes, Your Honor, of course.

And prior to going forward would Your Honor like to have a brief summary of the 83rd and 103rd omnibus objection to claim?

THE COURT: Only insofar as they're objected to. You don't need to take time on folks who did not object.

MR. GRIFFITHS: Yes, Your Honor.

So if I may with respect to the 83rd omnibus objection to claims we have three claimants who have submitted responses. Mr. Hickman, Ms. Schneider, and Mr. McMullen who I believe are all on the phone today.

I've spoken with each of these claimants at length, I've made them aware of Your Honor's prior rulings, and they've elected to proceed with this hearing.

On behalf of the Motors Liquidation Company, GUC Trust, and the debtors we'd like to just express our

sympathies that the -- of the impact that the debtors' financial situation has had on their personal lives, but given the debtors' liquidation there isn't any other result that's available to us today.

Moving to Mr. Hickman. Mr. Hickman --

THE COURT: Pause, please, Mr. Griffiths.

MR. GRIFFITHS: Yes, Your Honor.

THE COURT: Mr. Hickman, you on the phone with us?

MR. HICKMAN: Yes, I am, Your Honor.

THE COURT: Okay. And can you hear Mr. Griffiths okay?

MR. HICKMAN: Very faintly.

THE COURT: All right. Then I'm going to request that Mr. -- you, Mr. Griffiths, pull that microphone even closer to you and don't worry about being polite to me, keep your voice loud and speak slowly so that the folks who are appearing only by phone have the best possible chance of hearing what you have to say.

MR. GRIFFITHS: Yes, Your Honor, thank you.

Mr. Hickman has not submitted a response to the -- to the omnibus objection to claims though has elected to proceed with the hearing today. We're happy to hear any representations that Mr. Hickman may make. We're content to rely on both the omnibus objection and our reply in terms of our submission with Mr. Hickman's matter.

THE COURT: Okay. Then you stand by at the counsel table -- or excuse me -- at the podium, and I'll -- I'll hear from Mr. Hickman. But I'm wondering if I should make Mr. Hickman speak before you've had a chance to speak, because I think you're going to be making similar points, Mr. Griffiths, with respect to Mr. McMullen, Ms. Schneider, Mr. Jankowski, Mr. Alarie, and Mr. Conrad. Do you wish to make any statements that apply to them generally?

MR. GRIFFITHS: Yes, Your Honor, I'll make a general statement that would apply to each of the respondents.

THE COURT: I think you probably should and then I want to give each of those six folks a chance to be heard, and then I'm going to give you a chance to reply, and I'm going to give any of them a chance to surreply. I think that's the most efficient way of dealing with it.

MR. GRIFFITHS: Yes, Your Honor, thank you.

MS. BELLAIRE: I don't mean to interrupt, this is Linda Bellaire, and I was included in the 83rd omnibus, whatever it is, and David, you told me that I would hear whether or not my request to continue in delay would be honored and all I got was that I needed to participate today.

THE COURT: Are you looking for more time, Ms. Bellaire or do you want to be heard today?

MS. BELLAIRE: I can be heard today. I was hoping for more time, you'll get my emotional response rather than a researched and well prepared response.

THE COURT: Well, Mr. Griffiths, I wonder if I should give Ms. Bellaire extra time. Would there be any material prejudice if I allowed her to be heard at the next hearing that we have instead of this one?

MR. GRIFFITHS: No, Your Honor. It's our understanding that we had granted Ms. Bellaire an adjournment, that she had been invited to attend this hearing purely for informational purposes.

THE COURT: Oh, okay, fine.

MR. GRIFFITHS: And --

THE COURT: Then Ms. Bellaire, you're going to -- I'm granting the request for extra time.

MS. BELLAIRE: Okay, thank you.

THE COURT: What happens today will be a precedent, but it will not be binding on you. If there's some reason why any principals of law that I announce today wouldn't apply to you.

MS. BELLAIRE: Okay.

THE COURT: Now you may, but need not stay on the line, it's up to you.

MS. BELLAIRE: Okay, thank you.

THE COURT: Okay. Go ahead then, Mr. Griffiths.

MR. GRIFFITHS: Thank you, Your Honor.

Each of the claimants require to the bar date submitted proofs of claim in each case arguing that --

MR. HICKMAN: I can't hear him, Judge.

MR. GRIFFITHS: I will speak close to the microphone. Arguing that benefit modifications that had been made by the debtors both prior to their Chapter 11 filing and following the Chapter 11 filing to welfare benefit plans and life insurance were either not validly entered into or that they had some sort of claim for the difference between the value that their benefits had been reduced to and the value that their benefits had previously existed at.

Subsequent to this the debtors filed an omnibus objection to claims to each of these various proofs of claim that were filed. The omnibus objection to claim argues in essence that the welfare benefit plans that govern each of the benefits granted to the employees reserve the rights unequivocally for the debtors to amend or modify such benefits. Those -- those reservation of rights are contained both in the plan documents themselves and in the summary plan descriptions that were provided to employees during their employment and to retirees every five years following their retirement.

The omnibus objection goes on to cite various case

law in various jurisdictions which supports the debtors' position that there is no -- that no claim can be founded against the debtors for these benefit modification claims.

The omnibus objection cites Sprague in the Sixth Circuit and More Metrolife (ph) in the Second Circuit. More Metrolife particularly relevant today given that many of the replies that have been -- or responses that have been filed by employee claimants cite various discussions they had had with management of General Motors during the course of their employment and that the benefit modifications were not in accordance with their understanding of their benefit plans.

More Metrolife explains very clearly that the only way a benefit modification can be deemed to -- the only way that benefits can be deemed to be vested is if the plan itself provides for such vesting, and the relevant statute in this case, the Employee Retirement Income Security Act of 1974 is also clear insofar as vesting requires a specific intent on behalf of the employer.

In terms of our reply it goes into substantially the same arguments, and our replies include a general summary of the arguments that each claimant have made. And what I propose is therefore just to briefly summarize the arguments that are being made by each claimant and then to allow each claimant to just speak at Your Honor's discretion.

THE COURT: All right, you may continue.

MR. GRIFFITHS: Thank you, Your Honor.

Turning first to Mr. Hickman who I believe Your Honor has indicated is on the telephone today.

The remarks I have just made apply to Mr. Hickman, and should he wish to make any further comments then perhaps now is an appropriate time.

THE COURT: All right, pause.

Mr. Hickman, I'll hear your argument.

MR. HICKMAN: Thank you, Your Honor, and thank you Mr. Griffiths for bringing this up today.

Since I filed by original complaint on the loss of benefits I suppose each of us has become a little better educated on the bankruptcy laws, and I've tried to settle this outside of having to follow through with the Bankruptcy Court on my own.

I spend 40 years to the day, November 1, 1968 to November 1, 2008 and then took what I call an early retirement, most people would probably call it late retirement, but I would be there today if it weren't for the bankruptcy.

My situation is slightly different than David has mentioned. I realize the loss of the benefits and the ruling of the federal bankruptcy, and I realize the reduction in those eliminations.

Shortly after the bankruptcy filing -- this is a new piece of information which I have just recently uncovered, tried to settle it with my own input but unfortunately have not been able to. Shortly after the bankruptcy became effective a number of GM salary employees were contacted either by e-mail or regular mail or registered mail, and I don't know the circumstances of how they were chosen, but I do know that some were provided opportunity, a window in time between GM, HR, and Metropolitan Life to purchase at the employee's expense a replacement life insurance coverage for their life and the coverage of their spouse.

It's particularly important in my case. I did not receive such a letter, but I've had it read to me over the phone and Metropolitan does agree that it does exist in loss of supply to employees.

My case is a little different and I'm sure you here this from all thousand of employees that (indiscernible - 02:03:55). I spent 40 years with the company, and during that I believe according to my business cards, that I held 15 different positions and had 12 geographical relocations around the country. Some wonderful places, some not so. But with those many moves I did not end up being married till close to age 50. So there's quite a number of years between my and my spouses age, 17 years.

So when the GM pamphlet of the -- prior to the -- just prior to the bankruptcy was provided, I think it was about a 221-page document, I still retain it -- regard a number of agreements between you and your spouse and some witness signatures. And one of those documents related to whether your spouse would obtain spousal benefits after your death.

GM's formula in their retirement booklet, which was provided to us, this was November of 2008, showed a penalty if your spouse is five years different than your age and greater and it had a sliding share. So for us with 17 years it was a -- it was a penalty that I couldn't take the retirement and allow the penalty.

So as long as we had the life insurance and coverage we chose to defer the spousal coverage which then allowed me to take the early retirement. Of course the bankruptcy --

THE COURT: Pause, please, Mr. Hickman. Just -- I want to keep up with you.

MR. HICKMAN: Yes, sir.

THE COURT: Are you talking on coverage for your wife about life insurance coverage --

MR. HICKMAN: No.

THE COURT: -- or medical insurance --

MR. HICKMAN: No.

THE COURT: -- or pension? Help me --

MR. HICKMAN: Pension.

THE COURT: -- better understand.

MR. HICKMAN: Yes, pension. Spousal coverage of the pension. And you have an opportunity in the GM documents to choose the spousal coverage after your dealt that she would receive the remaining portion -- a reduced portion of your pension, and if you chose to do that there was a penalty to pay if there were five years or greater in your ages, and it was a sliding stage. And with 17 years difference it was a little bit cost problematic for us.

So we still had the GM -- at that time we still had the GM life insurance coverage so we chose to defer her spousal pension coverage, which is a reduced portion of my pension.

THE COURT: Uh-huh. The rationale for that being that the younger your wife might be at such time as you died the longer her life expectancy at least actuarially would be?

MR. HICKMAN: Well that and the combination that my age is so much greater than hers that there was a longer period of coverage that they would have to pay her.

THE COURT: I'm with you, keep going, please.

MR. HICKMAN: And there was a penalty in the documents, we reviewed it with both my accountant, my tax

attorney, and my attorney. There was not a good answer to it, but if we were going to take the early out package I had to defer the spousal coverage because she was still going to be covered by my then retirement life insurance in the retirement (indiscernible - 02:07:45) period.

So there was no problem until the bankruptcy came through and of course that life insurance for the GM salaried employees was one of the eliminated components, and I understand that.

And what shortly followed that that GM salary employees who had retired -- and I don't know the schedule or how this formula was -- was provided -- but a letter was sent to employees in the white collar employment area that had retired -- I don't know if they were deferred to spousal coverage or if they were recent retirees -- but I know that the letter came and there was a small bundle in time. I think it was seven days, it could have been ten, that you could apply to reinstate that coverage at the employee expense to cover your spouse.

I never saw the letter. I'm not sure how it was provided, and many things come to us with signature requested or sign receipt or registered mail. I did not receive the letter and knew nothing about it, and with the short window of seven or ten days by the time I did find out about it through it being read to me I contacted both HR and

Metropolitan and they did agree that there was this special coverage available made to the employees -- or retirees for this short window in time.

So I have no objection to what's happened here in the bankruptcy, I understand the law, my 40 wonderful productive years I wouldn't replace it for anything, I wish I was still there, but I would just like to have the opportunity to participate in that same reinstatement at my expense of the insurance coverage that was granted during this seven or ten-day window following the bankruptcy.

THE COURT: Okay. I think I understood what you told me. I'm going to have to think about it a bit.

What I want to do next is give other folks who are on the phone a chance to be heard as you were Mr. Hickman, and then I'm going to give Mr. Griffiths a chance to reply, and then I'll rule on everybody in this group after everybody has had a chance to speak their peace.

Do I have -- I don't see -- yes, I do see Mr. McMullan on the phone. Would you like to be heard next, Mr. McMullan?

OPERATOR: Your Honor, Mr. McMullan has not joined us today.

THE COURT: Oh, forgive me, okay. Then Mr. McMullan did not.

What about Darlene Schneider?

MS. SCHNEIDER: I'm here, Your Honor.

THE COURT: Would you like to argue, Ms. Schneider?

MS. SCHNEIDER: I sure would.

THE COURT: Go ahead then, please.

MS. SCHNEIDER: Well, after everything that's been said in the summary that David Griffiths has made I want to just make a statement that I too appreciate that GM -- the new GM accepted the obligation to continue our pension fund, but I mean they did it for business reasons too and they did get some benefits from it. And all the years we worked for them -- I mean a big company makes decisions I mean decades before that either results in a positive or negative result in the future just as GM ended up in the bankruptcy.

Well, I'm just going to compare that to my situation. I made a decision to stay with General Motors for my career of 37 years for a retirement benefit, and my husband developed heart problems and had many surgeries and became totally permanently disabled and could not work almost our whole married life.

So we reversed roles at a very young age when we first married for his health sake and we -- and he raised the three children while I worked, okay? So I wanted to make that statement.

I mean my family all worked for the automotive

company and everyone thought, especially my father, that with my situation he felt that he was glad that I had the security behind me.

So I know that the statement has been made that because of bankruptcy law GM has the unilateral decision whether to eliminate benefits or not, and I just want to make a statement that I don't think it's fair that these benefits were used as a carrot kind of to us and they were kind of balancing the equation of our wages that are frozen and we need to work overtime without pay, and we did this because we were part of this great company, okay?

We knew that on our benefit sheet it stated, you know, that these benefits could be changed or modified or eliminated, but my leader never identifies that when whenever I spoke to him about my career or when I wasn't getting a large raise, instead the benefits were emphasized, and that's what I base my career on was the benefit package.

Now I want to talk about the fact that I did that because -- because of the benefits not the salary, and I base that on the fact that I was raising the children without a father's income, so it was very important to me to have benefits.

I started in June in 1969, I retired in 2007, okay? When I graduated with my Bachelor's in business from the University of Michigan in 1991 I had a discussion with

my husband about leaving GM. I was not receiving regular increasing. I was in the clerical field at that time but I was positioning myself out of the clerical field with this degree.

At that time I had 22 years of service and a family of three children, plus a disabled husband, and I felt that my retirement with benefits meant more to me than my salary, and so at that time I decided to make the decision to stay with GM.

Now I graduated in '91, so in '93 I transferred to the General Motors Milford Proving Ground, it's an hour distance from my home to take a purchasing position, and I asked the leader at that time, couldn't I just get a little bit of an increase to, you know, for gas and wear and tear on my car, and there was nothing available for me. It was just a lateral transfer. So I received no promotion, but again, I was positioning myself for a promotion. So in 1994 I finally did get the promotion.

But the point I'm trying to make here is that during the years 1983 -- 1986 to 1993, seven years I stayed with GM and sacrificed salary increases for the sake of the corporation when GM management made the business decision to freeze my salary during these years. This decision ultimately reduced my social security benefits for retirement too. Then again it was frozen for three years

during 1991 through '94 for the same reason, because of decisions made by the corporation.

Now I'm going to go all the way to the end of my career. Here I am it's 2006, I've gotten a lot of promotions and acclamations and all that, and I finally received -- when I received my final promotion my pay grade was $8,388 less than the market rate at that time. So there was a minimum and maximum for what you should make at that position and I was 8,000 below, and I had been thousands below in each level up, so I never really caught up with the marketability of my position and responsible, but I stayed with GM because I wanted the security of the benefits and the life insurance for my family and my husband.

I want to go to my objections that I put in on October 17th.

THE COURT: Uh-huh, go ahead.

MS. SCHNEIDER: I mean my first one might be thrown out because it said that I asked that General Motors retain -- not retain their unilateral right to withhold or eliminate benefits promised to employees, and now I understand under bankruptcy law that they have that opportunity.

My second one was about hardship cases to be heard individually and consider a settlement that would instill compensation, that would allow the party to prepare other

options or changes that would improve their financial position, provide some funding that would provide for alternative income to make up the difference for what I've lost. And in my case I actually when I retired early I was trying to maybe work another position so I could be with my husband in Arizona. He had to leave the winter months in Michigan to go to Arizona because of his health. He has gotten pneumonia, and because of his previous heart surgeries we had to separate, and I would fly there for a week but I couldn't afford to really keep going back and for so I usually saw him for a week and then for six weeks. So he'd stay six weeks, I'd go for a week, he'd stay six weeks, and then maybe reunite in the summer.

And so that after a few years didn't work very well with me so I decided to take an early retirement and we made it -- we talked about it and I said, well, I will do a job that maybe I can do in both places.

So I took some classes in interior design and when this happened with the bankruptcy our money just -- our whole financial thing just kind of fell apart. I mean we had a meager savings and I had by 401(b), but we didn't have enough to cover $3,000 in medical expenses for me and his life insurance, I added more life insurance, and then his medical, which is another point I'm going to make too.

Let's see. We received a letter from -- it's -- I

sent this package over earlier so that you would have it if I referred to it in court, and it was -- I have number 3 circled on the top. It says, "Material modifications to the General Motor Salary Healthcare Program effective January 1st, 2010," and it was sent by HR and the fifth paragraph down indicates that we should be getting $260 a month to an HRA account for retirees and surviving spouses under the age 65 who are eligible for Medicare. Well, my husband is on Medicare because of his disability, and then it says, “therefore, the participant may obtain reimbursement of cost for qualified healthcare expenses.” Then when we attain the age of 65, we would receive a $300 into the pension check.

So, we thought well at least that’ll defer some of the costs; however, we did not receive that, and then when we called HR, they indicated that he was not eligible for it, and we didn’t understand why. It was never really explained to us why.

They sent us to one of their employees who spoke to my husband to help him arrange for which healthcare would be best for him knowing he would have open-heart surgery, so we did get advice on that, but we don’t understand why we’re not receiving this money.

THE COURT: Uh-huh Pause please, Ms. Schneider.

MS. SCHNEIDER: And then --

THE COURT: Pause please, a question for you. Forgive me. Are you now eligible for Medicare?

MS. SCHNEIDER: No, my age is 61.

THE COURT: Uh-huh, continue please.

MS. SCHNEIDER: Okay, in addition, my life insurance benefit, okay, was to equal a one year salary at the time of retirement. This amount was planned to compensate the difference of the reduction of my pension benefit to myself in case that I predeceased him, because he has no retirement benefits, and I have elected to reduce my pension, so that upon my death he does receive something. But it's not even what I get, you know. So, I used the life insurance in addition to that. Now, I've added life insurance, but it's at additional cost to me.

So, we've accepted, you know, a lot of different things that put us in a very awkward financial position, not what I had expected to have with General Motors when I left, and it's not their fault, but I do feel that we deserve some compensation that would help us out of our financial position. You know, some sort of settlement that could reduce our debt, and so that we could be in a better position to handle the whole situation. We just didn't have enough time to know this. So, maybe I wouldn't have taken retirement, but, you know, who knows what would have happened?

So, with the bankruptcy it then affected my retirement savings, the loss of the stock market, and our vestments in General Motors. I even had stock options that were given to us as a reward, instead of stock, and that was lost in bankruptcy, because we're required to hold it for five years before we are able to sell that.

So, you know, I'm not asking for recompense on that. I just want to be in a better position for us to be able to take care of my husband. Thank you very much for the opportunity of stating my case.

THE COURT: Thank you.

Okay, Floyd Jankowski? Do you wish to be heard, sir? Mr. Jankowski?

MR. JANKOWSKI: Yes?

THE COURT: Would you like to argue also?

MR. JANKOWSKI: Yes, I would. My name is Floyd Jankowski, and I retired on February 1, 1992, due to a heart condition that I've had, well, that I obtained while I was working back in 1989. I had 11 heart attacks, and I went back to work, and I worked for a little over a year.

Now, I retired February 1st, and on my going out, they gave me a life insurance policy for $77,000, which was twice my base salary. They also had me get comprehensive medicals for my wife and I, in case I had to go to on a long-term care. I also had paid medical, which they were

paying on a monthly basis up until the latter ‘90s when they made salaries start paying for their medical, and then I also had an optional life insurance policy which, I was paying $30 some dollars a month for five times my base salary, which at the age of 50 took me up to $76,092.

So, okay, I retired February 1st of 1992, and December of 1992, I had a worker’s comp trial, which they stated in there that I was to get all my pension benefits, and anything that was, oh, awarded to me, you know, for other stuff. And mainly, that’s what I would like to get reimbursed for all the insurance that I lost which was $60,000, or $67,000.

I’d also like to get reimbursed $5,834.60 for my extended care that I paid for, and I would also to get reimbursed for my Medicare premium that I was supposed to be reimbursed.

I’d also like to get reimbursed for my premium life insurance from when I was having my optional life insurance, and then I’d also like to be reimbursed for the medical insurance that I had to pay from ’92 to when they started making us pay in the latter '90s, and that’s typically my case.

I figure that if I had an award from the worker’s comp trial that, that should overrule what I did when I signed out to go to retire.

That's it, Your Honor.

THE COURT: Okay, thank you, Mr. Jankowski.

And on the next claimant, forgive me if I am not pronouncing the name correctly, Louis J. Alarie?

MR. ALARIE: That's right, Your Honor.

THE COURT: Would you like to argue, Mr. Alarie?

MR. ALARIE: Louis J. Alarie is the English pronunciation of Louie Alarie, good French name.

THE COURT: Do you have a preference as to what I call you?

MR. ALARIE: The English pronunciation is fine.

THE COURT: Okay, then proceed with your argument, please.

MR. ALARIE: A couple of points of clarification that you might need. The reduced pension that the previous callers talked about was a percentage of the pension that was earned to be set aside for your spouse upon your death. In my case it was five percent and it would have been half of what my pension would have been, because my wife is basically the same age I am. All right, that was an agreement and it is done, and I certainly hope this goes on.

Now, to my argument. The other folks are arguing about the fact that we didn't have a contract, signed contract for this life insurance reduction. Well, no, we don't have a signed contract. We have an implied contract.

When I wanted to retire and sat down with the retirement people at the corporation, this is what I was going to get, five percent was going to be set aside for my wife's pension after I die, and so on, and so on, and life insurance one time your base salary. I'm sure you understand that, because the others have spoken about it.

THE COURT: Yes, continue, please.

MR. ALARIE: In my case, I guess I wasn't as well paid as some of them, but in my case it amounted to $36,000 that they just cut out from underneath me.

Now, I retired September 1st, 1990. I have been retired almost 22 years. I'm 77 years old, all right? I took an early retirement back in the days when they could, they were going through a cost reduction program, and if you could eliminate your job without just quitting, they would let you retire early. Well, I did. There's a long story to that, but you don't need that for the discussion. I just fulfilled all the requirements, and I went out early. That's why I'm only 77 and been retired for almost 22 years, but that's beside the point right now.

The point of the matter is it was an implied contract. It was listed on my sheet when I retired. I still have it.

Now, I realize that the board of directors can change things whenever they want to. My point is this, the

board of directors was coerced in this guided, dictated, bankruptcy which broke all the rules of bankruptcy that I can rely on by putting one group of people ahead of creditors in the payoff, and to hell with everybody else. And we'll just cut out the life insurance and we won't have to pay that premium anymore.

In addition to that, the car czar said, we don't need to give the retirees any cost of living adjustment, and my pension hasn't increased, except over the medical business that they got out of two, three years ago. My pension hasn't increased in four years, since bankruptcy. No cost of living allowance. Finally, this year Social Security Administration has decided, well we've had enough inflation, well, we'll give the people some more money. Comes down to less than $50 a month.

Now, my point is this. I counted on my full life insurance as a part of my retirement, early retirement. I had, at one point in time, but I gave up on it because the premium was too great, the opportunity to buy up to four times my base salary which I did when I was working for a long period of time, and for the first five years of my retirement. The premium got so great that I decided that I really can't afford that. All right?

Here's the bit. I retired under certain premises, written or not written. I have a paper in which my

retirement benefits were listed and on that paper is life insurance, term life insurance.

Now, I have written you two letters recommending several possible solutions to this problem. I'll add one more. Out of the treasury stock in the corporation, in the new corporation, they give us five shares for every $100 of life insurance that they took away. Now, that would cost them the printing and issuing of the life insurance policy and a reduction in their treasury issues. And I'm going to say to you this. You are a federal employee, and I respect that position, but put yourself in our position, where some dictated, guided bankruptcy, which broke all the rules, can come along and say, I'm sorry, Judge, you're not going to get a big life insurance policy as you used to have, and we're going to reduce your pension, and we're going to do a whole bunch of things, and we're going to cut off your surviving spouse, and take it or leave it. Now, I don't think you'd like that. Or if we have some nutcase in Congress who decides we don't need your level of federal judge and, so, we're going to do away with you and all of your pensions and benefits, take it or leave it. What would you do? You'd be really unhappy, I think. So, would your wife if you've got one.

THE COURT: I do, but please continue.

MR. ALARIE: Now, the point is the government, the

administration, the car czar made edicts telling the corporation you will do these things, or we won't bail you out. And guess what? The top executives and their salaries are scrutinized. The bonuses are scrutinized. The unions, they get their money because they have a contract and the government can't fight that nor do they want to. That's their voting base. We got screwed, Your Honor. Flat out screwed by the administration and the whole thing, and I know how you're going to probably rule, because it's written all over the political pages of the newspaper, but be that as it may, I think we got some sort of compensation coming, shares of stock, five shares for every $100 that we got screwed out of, maybe only four because it did close at $26 yesterday. Or a one-time, now I put this in the letters I sent to you. A one-time premium, get all your whiz kids sitting down, figure out with the insurance companies how much money it would be necessary to buy a one, one-time premium to cover everybody and all the money. And then figure that out and add that to your liquidation proceedings.

Another possible situation is to flat out restore it and tell the corporation that they have to do that. You told them they could take it away or had to take it away. Now tell them they got to put it back. There are altogether too many people out here in the world that had their, some

of their financial legs just cut right out from under them. And that's not right. It is not the way to do business.

And I guess I'm done, so I will await your ruling, sir.

THE COURT: Very well, thank you.

MR. ALARIE: Hello? Are you there?

THE COURT: Yes, but I didn't want to interrupt you.

MR. ALARIE: I'm sorry, I cannot hear you.

THE COURT: Can you hear me now?

MR. ALARIE: Not well.

THE COURT: Well, I'm speaking very loudly and directly into the microphone.

MR. ALARIE: Okay, now you're coming through.

THE COURT: Okay, thank you, Mr. Alarie. I would like to hear next from Mr. Conrad, Mr. George Conrad, if he would like to heard.

OPERATOR: Your Honor, this is your operator again. Mr. Conrad has not joined the feeder.

THE COURT: Oh, okay. Very well. Then I believe I have heard from all of the people on this motion, and after they spoke, I'm now going to give Mr. Griffiths the chance to reply, to respond to the new matter that was set forth by the people who have just had a chance to be heard.

MR. GRIFFITHS: Thank you, Your Honor, and I'll

try and speak as loud as I can into the microphone, as well.

Turning first to Mr. Hickman's submission, obviously on July the 10th, 2009, benefits were transferred to new GM as part of the master settlement purchase agreement. New GM assumed responsibility for all pension obligations and assumed welfare benefit plans, as modified, and then put in place some modifications of its own.

I'm more than happy to spend as much time as necessary with Mr. Hickman trying to determine what additional benefits from new GM he thinks he may be entitled to. I'm more than happy to intercede with new GM and with their employee benefits team to determine whether Mr. Hickman was contacted by them, and whether there were any procedural irregularities in that respect.

I would just like to point out that these are benefits provided by new GM, not by the debtors or the GUC Trust and, therefore, this issue that he has raised today, does not have a bearing on his claim against the debtors or the GUC Trust.

With respect to life insurance specifically, I believe that the offer that was made by new GM following the master settlement purchase agreement, was a one-time offer to former employees, or retirees, to purchase additional life insurance at a reduced cost, and while I haven't seen the terms of that document, it was an offer made by new GM.

I don't believe it affected pension benefits, as such.

Pension benefits, having been assumed by new GM, were then subsequently increased by $300 to compensate for the benefits.

THE COURT: Well, I understood Mr. Hickman to say that he made a decision about, and I would have to go back to my notes, either life insurance based upon pension, or pension based upon life. But, your point is that each of those is now being covered by new GM, and that it isn't relevant to this motion or this objection that I have before me today?

MR. GRIFFITHS: Yes, Your Honor. Pensions were assumed by new GM. Life insurance was reduced to $10,000, the $10,000 obligation was assumed by new GM, as well. There may have been a one-time offer by new GM for former employees to purchase addition insurance; that's not relevant to Mr. Hickman's claim, and the fact that the offer was made doesn't grant Mr. Hickman a claim for the modified benefits between the difference his life insurance would have been and what it was subsequently reduced to based on the arguments we've raised in our objection and reply.

MR. HICKMAN: Your Honor?

THE COURT: I'm going to give you a chance to be heard again, Mr. Hickman, but I don't want to interrupt Mr. Griffiths in his points. Make a note of the thought you

want to express to me, and I'll hear it in a couple of minutes.

Mr. Griffiths, please continue.

MR. GRIFFITHS: I have nothing else to say with respect to Mr. Hickman.

THE COURT: Okay, well then maybe it's good, even though you have other things on other people, to give Mr. Hickman a chance to respond now?

MR. HICKMAN: Thank you, Your Honor.

I believe Mr. Griffiths is primarily correct. When I filed my first loss on the old GM for the bankruptcy losses, I think all of us have become better educated. Maybe we should have been at a better level at the time we filed those losses. I have since studied it enough to understand that those losses are basically a part of the federal bankruptcy proceedings.

The really only two items that I see that stand out. One is the is the one I brought to your attention, and that's the fact that either all or a select number of GM white collar employees, salaried employees, were offered a one-time opportunity at the employee expense to replace the lost life insurance should they choose to. It was communicated to a group of salaried employees and I don't know in what fashion, and it was a slight window in time, either seven or 10 days that you could purchase it. Someone

read me the notice over the phone from the East Coast, I didn't, never received it. So, I called Metropolitan and both HR. Metropolitan acknowledged that yes, you did have a short window in time that we sent out shortly after the bankruptcy proceedings allowing the salaried employees at their expense to purchase the life insurance, but you cannot purchase it now because the window is closed.

So, I would like to proceed as to how I was not notified and can that window be reopened, so I can participate in that claim at my expense?

THE COURT: Okay, I think I understand now, and when I asked my question before and had uncertainty, I think you've now answered it. You may have said it right the first time too, but now I understand it.

Okay, back to you, Mr. Griffiths.

MR. GRIFFITHS: Mr. Hickman's understanding is largely correct. If an offer for life insurance was made by new GM and wasn't communicated to him, that's not a matter for the Motors Liquidation Company GUC Trust. That being said, we're more than happy to intercede with new GM to determine the factors surrounding the offer, and I would just like to point out, although I don't want to argue the case for new GM, that ERISA doesn't require all employees to be treated equally.

I can't speak to why Mr. Hickman may or may not

have received this offer, but I can certainly spend as much time as is necessary at finding out why, explaining it to Mr. Hickman, and bringing it to Your Honor's attention if we believe that there is a procedure irregularity in that respect.

THE COURT: Okay, then would you continue, please.

MR. GRIFFITHS: Yes, Your Honor, thank you.

The next claimant is Mrs. Schneider. Mrs. Schneider's correct that pensions were transferred to new GM. Mrs. Schneider sent us a fax yesterday which we forwarded to the Court which raised this new issue with respect to whether she should be receiving additional from new GM. The arguments are largely the same, as raised for Mr. Hickman. Pensions were transferred to new GM following the master settlement purchase agreement. If new GM determined to make some additional benefits available to Mrs. Schneider, that's their right to do so.

Again, I'm more than happy to contact new GM to determine why Mrs. Schneider is not receiving benefits to which she's entitled. Having briefly looked into it last night, I suspect that the answer revolves around the definition of surviving spouse, and that those benefits are only available as an additional premium where a surviving is, in fact, what is meant by the word where the --

THE COURT: In other words, you're wondering it

would apply if you've lost your spouse --

MR. GRIFFITHS: Correct.

THE COURT: -- it would not yet be triggered if both spouses are still living?

MR. GRIFFITHS: Exactly, Your Honor. The definition of surviving spouse is used in all of the GM communications that I'm aware of refer to surviving spouse in that sense.

The document that Mrs. Schneider sent through doesn't use a defined term, as such, but new GM should be able to clear up the matter, I think. My firm will be able to have more success than she will in getting new GM to respond to the request and we would, of course, do so. And again, if there is any irregularity, bring it to Your Honor's attention. This doesn't affect Mrs. Schneider's claim against the GUC Trust or the debtors which I believe is unfounded.

THE COURT: Okay, continue please.

MR. GRIFFITHS: Thank you, Your Honor.

Next is Mr. Jankowski. I would just like to briefly address the settlement that Mr. Jankowski addressed.

I've reviewed this as part of Mr. Jankowski's proof of claim, and then subsequently requested additional documentational pages from the judgment, so that I could review it. This was a settlement providing, to settle a

worker's compensation claim that the transcript itself has Mr. Jankowski's attorney explaining that Mr. Jankowski would not be able to prove a worker's compensation claim against General Motors, that General Motors had agreed to enter into a settlement in full and final settlement of all the claims that Mr. Jankowski had brought, and the settlement goes on to note that this would have no effect on Mr. Jankowski's pension benefits. There's no mention of welfare benefits, as such.

Again, Mr. Jankowski's pension was transferred to new GM on July 10, 2009. New GM is responsible for Mr. Jankowski's pension. I'm not aware of any changes to the pension itself. I believe it continues to be paid. It is not a responsibility of the debtors or of the GUC Trust and, therefore, the settlement has no bearing on the claim.

Mr. Jankowski has also raised the question of extended care provided by new GM. I've explained the basis on which there is no claim against the debtors or the GUC Trust to Mr. Jankowski, but I'm happy to put it on the record.

The extended care program was a voluntary program that employees entered into on a pay-as-you-go basis, whereby they would pay additional premiums out of their own pocket to cover certain additional welfare benefits. That welfare benefit plan was subject to the same terms and

conditions as all of GM's welfare benefit plans, insofar as it could be amended or terminated at any time.

Mr. Jankowski was provided with the benefits under that plan while it was in existence. Once it had terminated, Mr. Jankowski was no longer for additional payments, that GM is no longer responsible to provide that benefits, and no recovery is possible for the premiums paid because, like any insurance policy, a home insurance policy or anything like that, he was covered during the time that the payments were being made. So, had he elected or had, in fact, availed himself of the benefits, then he would have received those benefits.

Lastly, that Medicare payments are not the responsibility of the debtors or the GUC Trust and, therefore, we have no liability for those.

THE COURT: Okay. Anything further, Mr. Griffiths?

MR. GRIFFITHS: Only if Mr. Jankowski would like to reply further.

MR. JANKOWSKI: Yes, I feel that you should reimburse me for all this. See, I lost my spouse in 2003, had 29.6 years seniority, and when I look at my contract with General Motors it states in there that you guys owe me for my retirement benefit, and there's -- what are retirement benefits? And that was everything -- I put my

life into this, into that company. I retired because if I would have I would have been dead, and I had everything set up for my wife so that in case I did die she was had gotten five times my base pay and been set for life. Well, it didn't work that way, I ended up burying her, so I feel GM needs to compensate me all the monies that I contributed to that extended care program, to my medical bills that are -- or medical premiums that I had to pay from the latter '90s to when they got the other contracts going with the union. And I feel they owe me what they owe me, what I asked the judge for.

And I sent the judge a letter and I hope he received it the other day about, you know, what happens to me. Look, you're a judge, I'll let you have that and let you make your decision.

Thank you.

THE COURT: Mr. Griffiths, continue with the next claimant, please, if you wish.

MR. GRIFFITHS: Yes, Your Honor, the last claimant is Mr. Alaire. Clearly all pension benefits again were transferred to new GM addressing Mr. Alarie's argument earlier.

Mr. Alaire argues that new GM -- sorry, that General Motors didn't make the reduction in benefits, it was otherwise forced on them through the U.S. Treasury and so on

and so forth. We've cited the minutes of the board of directors of the debtors reducing their benefits, in fact well before the bankruptcy, and we believe the benefits are being validly reduced.

Mostly the facts with respect to Mr. Alarie are very similar to those in Sprague and we cited Sprague as authority for the elimination or the expungement of Mr. Alarie's claim.

THE COURT: Okay.

MR. GRIFFITHS: That concludes our submissions. I do believe that Mr. -- I think it was Mr. McMullen and Mr. Conrad had -- had agreed to attend today's hearing and haven't attended and we're happy to rely on our submissions and on the written submissions for each of those claims.

THE COURT: Okay, thank you, Mr. Griffiths.

Is there any claimant who has anything further to say in reply to what Mr. Griffiths said the second time? Mr. Jankowski and Mr. Hickman having already availed themselves of that opportunity, and then I'm going to rule.

MR. ALARIE: This is Lou Alarie. I would like to make some additional comments.

THE COURT: You may, sir, so long as they're limited to anything new that Mr. Griffiths said the second time.

MR. ALARIE: Right. That letter that was spoken

about about giving us the opportunity to buy life insurance when they did away with it, I never received any letter like that, and would have availed myself of it had I received it. Because for the first five years of my retirement I did participate in the extra up to four times your base salary until the premiums got to be enormous, and I decided that I didn't need to do that.

As far as the board of directors I'll still make my contention that even though before bankruptcy was announced the board of directors was coerced into the bankruptcy, the bankruptcy was guided by the administration and the car czar and they put a group of people ahead of creditors, they broke all kinds of rules in your court, sir. I'm sorry, but it comes down to this, you're hiding behind coercion. You want our money you'll do this. Well, the board of directors said, yeah, all right we'll do this, now give us the money and we'll announce bankruptcy.

I'm sorry, I just can't find a place in my heart for what went on any place, any time. I think that the liquidation company and its attorneys are presenting a factual case, yes, based on the dates of the board of directors' meetings, but as Paul Harvey used to say, "They're not telling you the whole story." And I think they should be brought to account.

Thank you, sir, I will await.

THE COURT: Thank you.

Okay, folks, I want you to sit in place if you're in the courtroom or stand by the phone, you're going to hear a couple of minutes of silence.

(Pause)

THE COURT: All right, folks, now I must rule.

In these contested matters in the jointly administered Chapter 11 cases of Motors Liquidation Company and its affiliates, Motors Liquidation being the new name of the old GM.

Old GM moves, along with the recently formed GUC Trust, which is a trust formed for the benefit of old GM's creditors to disallow and expunge the welfare benefit claims of retirees and former employees pursuant to old GM's 83rd and 103rd omnibus objections.

Welfare benefit, as I used that expression to describe the claims of the retirees and former employees, is a word of art in pension law or ERISA law and bankruptcy law to describe benefits offered to employees, at least principally in the medical and life insurance areas, and are to be compared and contrasted to pension benefits which are not the subject of this motion that we have before us today.

As I'll go on to explain in more detail, the claims, insofar as they are based on such welfare benefits for medical coverage or life insurance coverage, must,

unfortunately, be disallowed. It gives me no pleasure to deny these claims. Denial of these claims results in hardships on the objectors. It also, of course, imposes hardships on those who did not object. And, in fact, the changes in the life insurance and medical benefits have created hardships on thousands, or at least hundreds, of similarly situated employees. I'm well aware of that fact, folks, but I am compelled to comply with the law and I'll be discussing that law momentarily. First, however, my findings of fact.

On June 1st, 2009, GM and its affiliates commenced these Chapter 11 bankruptcy cases. The following individuals, among others, timely filed proofs of claim. Mr. McMullen, Ms. Darlene M. Schneider, Mr. Robert R. Hickman, Mr. Floyd Jankowski, Mr. Louis Alarie, and Mr. George Conrad. That's six people who filed the objections that are before me today, four of whom orally argued. And I've considered both the written submissions and the oral argument in reaching these decisions.

Pursuant to procedures that were set up earlier in this case, the debtors filed omnibus claims objections to the claims of the six people I mentioned, among many, many others. An omnibus claims objection is one that applies to many people or entities at the same time.

The debtors and then the GUC Trust did so because

they have a fiduciary duty, that is a duty as a matter of trust, to the remainder of the creditors of old GM's estate to allow the claims that are deserving of allowance but, at the same time, to object to those that are not. The omnibus objections before me today were directed at claims of retired or former employees of old GM. Each of the six folks who I'm dealing with today timely responded to the GUC Trust's objections and the common thread that deals with all of these is that these objections, which are all, and I emphasize this and I'm going to come back to it, directed at claims that old GM rather than new GM involved rights that old GM had reserved or, to put it in another word, maintained and don't involve obligations that might be obligations imposed upon new GM.

Several points that were made today, most significantly by Mr. Hickman, though he wasn't the only one, deal with rights that some of them may have, vis-à-vis, new GM and I'm going to say now and I'll probably say again that rights against new GM aren't affected one way or the other by the objections we have here today.

Now, turning to my conclusions of law, including certain mixed findings of fact in law. A proof of claim is prima facie evidence of the validity and amount of the claim and the objector bears the initial burden of persuasion. In Re: Onita, Limited, 400BR at page 389, a decision of Judge

Cropper of this Court. What that means, translating from the Latin, is that, once a claimant, like each of the six people here, files a proof of claim, assuming at least if it's satisfactory, which all here have been found to be satisfactory in the first instance, it's good enough unless there is an objection. It's good enough to get paid the amount set forth in the claim.

When a proof of claim has been filed, the burden then shifts to the claimant if the objector produces evidence equal in force to the claim that was previously filed, which, if believed, would refute at least one of the allegations that's essential to the claim's legal burden. When the burden is shifted back to the claimant, the claimant must then prove by a preponderance of the evidence that, under applicable law, the claim should, again, be allowed.

Now, here we have exactly that situation. Each of the claims was prima facie okay. The GUC Trust then objected and met its burden, which meant that the claimants once more had the burden, and then I decide what the claimants are entitled to based on all of the evidence before me.

Here I am required to find and I do find as a mixed question of fact and law that the claimants haven't met their burden to show that their welfare benefits vested,

which means putting it in plainer English that they couldn't be taken away.

In dealing with claims of old GM retirees, which were very, very similar to the claims that are before me now, the U.S. Court of Appeals for the Sixth Circuit, in a case called Sprague versus General Motors Corp., 133 F.3rd, 388, determined that, because vesting of welfare planned benefits is not required by law, an employer's commitment to vest such benefits is not to be inferred lightly. The intent to vest must be found in the plan documents and must be stated in clear and express language. And as the Sixth Circuit observed in the Sprague decision, at page 401 of that decision, most of the summary plan descriptions unambiguously reserved GM's right to amend or terminate the plan.

What that means is that, while the claimants may very well have had, and I assume for the purpose of this analysis they had rights as the claimants have alleged them, new GM had the right to terminate those benefits and the plan documents that the employees had said that. Thus, although the benefits existed at one time, they could be changed and new GM changed them.

Now, I am intentionally taking documents and plan descriptions that could be described in more legalese terms and I'm, in essence, translating them into plain English so

that educated people, but who are not lawyers would better understand the reasons for this ruling. I invite people, if they want to, and, of course, any Appellate Court reviewing my work, to read the Sprague decision in greater detail and to read the plan documents of each employee in greater detail.

Now, several of the claimants have talked about decisions they made based on the documents that they read at the time and Mr. Jankowski, in particular, asked for a return of his premiums because he feels that he didn't get what he paid for. I well understand Mr. Jankowski's frustration in this regard, but what Mr. Jankowski was paying for was the benefits that were described in the benefit plan documents that he got and the benefit documents that he got showed the rights that GM leader availed itself of.

I know how frustrating that is, but because the plan documents reserved or maintained that right, and, again, I'm translating into plain English, the premiums that he paid got him the benefits that were then described. And those benefits that were then described that he admittedly and acknowledgedly paid for gave old GM the right to change them.

Now, others, most significantly Mr. Hickman, make a slightly different kind of claim. Mr. Hickman said in

substance that, while he understood the basis for the changes, he was making a different contention. In substance, and I know I'm paraphrasing, he said that there was a window of time, roughly seven to ten days, although I don't hold him to that, during which an offer was made to at least some people, to his understanding, an offer that was made by a mailing that he understands some of them to have received, but that he did not receive, to participate in an opportunity to replace lost life insurance. That offer, however, appears to have been made by new GM rather than old GM and it is possible, in Mr. Hickman's case, also Ms. Schneider's and perhaps others, that they may have rights from new GM but, if that's so, they're not the subject of this motion.

With very limited exceptions, none of which apply today, my responsibilities involve determining what old GM, now called Motors Liquidation Company and now the GUC Trust, owe to their employees not what new GM might owe or MetLife if new GM set up arrangements with MetLife. I will say and will require the GUC Trust to say that my ruling is without prejudice, which means it doesn't affect rights that any former employees have against new GM or anybody retained on behalf of new GM. Such rights are unaffected by this determination.

Mr. Griffiths said, if I heard him right and I'm

pretty sure he did because I think I heard him say it more than once, that he would be happy to help people who are the objectors on this motion communicate with new GM and to be of any assistance he could. I'm not ordering him to do that, but I appreciate his offer in that regard. And though the people on the phone couldn't see that, when I just said that, Mr. Griffiths nodded in an up and down yes direction.

I know that is not full consolation to the people who were affected by this motion, but they should understand that he's trying to do the right thing.

The one other contention that was made that isn't already governed by what I said so far was the contention made by Mr. Alarie that, in this bankruptcy that either I or the Treasury Department or the United States Government or perhaps new GM or some combination of them, broke all of the rules of bankruptcy when we got to this point in the bankruptcy case.

The contentions that Mr. Alarie made were addressed in a written opinion that I issued that was roughly 80 pages long, which was then appealed to, if I'm not mistaken, five district judges and, in one of those appeals, also to the Second Circuit Court of Appeals. Two or perhaps to a lesser extent three of the District Court opinions were district courts to whom the earlier proceedings were made issued their own rulings and, in those

two, the decision was affirmed. I tried very hard, folks, to get it right. I guess the Appellate judges were the ones who would ultimately decide that.

But those rulings are what they are and fully understanding the views of Mr. Alarie on this issue and the views of hundreds of others, maybe thousands of others, who have expressed views yea or nay on the wisdom of what happened up to this point, what has happened up to this point gives me the case as I'm now required to decide it. People, of course, have the right, if they think the government did the wrong thing, to be heard at the ballot boxes around the country. But a judge like me is sworn to obey the law and to try to decide what the law is the best he or she can. And, folks, that's what I did and, after having done so, I necessarily must take the case in the form in which it's now presented to me.

Now, Mr. Griffiths, I'm authorizing and directing that you settle an order in accordance with what I just said. Settling an order is a word of art that doesn't mean what it sounds. Settling an order means proposing an order that I sign that is sent out to people who have the right to comment on whether they think an order as presented to me for signature is consistent with the ruling.

After that order is entered, each of the six people who objected has the right to seek appellate review

to appeal the order. The time to appeal in a bankruptcy case is much more limited than it is in other areas of the law. Fourteen days. But the time to appeal is going to run from the time that my order is entered, not from the time that I am dictating it now.

If you are not objecting to the form of the order, but you nevertheless want to appeal it, you have that right as long as you file a notice of appeal within the 14 day deadline after the appeal is entered and after, assuming, of course, that you comply with the other requirements for prosecuting the appeal that the law has, most significantly in rules of the Federal Bankruptcy Procedure that are to be found in rule, starting with 8,000.

Folks, I understand once more how hard this case has been on you and on other employees similarly situated. Other employees, other retirees. But, once again, I am required to comply with the law.

We're now going to take a recess until 1:30. It's now 1:22 by the clock in my courtroom. I don't know if you're all on the eastern time zone or not. and then I'm going to take the remaining matters.

Those who are on the phone whose matters I just dealt with are free to drop off the call or to stay as they choose. I would ask for further patience from those people whose claims I have not yet addressed and we'll

continue again at 1:30. We're in recess.

(Recess at 1:22)

THE COURT: Have seats, please.

Okay. I want to thank the folks who are on the phone for their patience. It's been a very long day and we're not done yet, but we're just going to keep moving forward. Okay.

I have counsel for the GUC Trust in the courtroom. Do I have recommendations as to which of the remaining issues you'd like to deal with next?

MS. GREER: Certainly, Your Honor. Stephanie Greer from Dickstein Shapiro on behalf of the GUC Trust.

Your Honor, I'd suggest that we take Ms. Meyer's claim first, followed by Mr. Marangos so we don't have to keep them on the phone. We can go to the uncontested matters. And just, I wanted to also give Your Honor an update as follow-up from our February 9th hearing. It won't take but a minute, but I think we should take Ms. Meyers first if you're amenable to that.

THE COURT: Fair enough. Ms. Meyer, Ms. Patricia Meyer, are you still with us? CourtCall? Do we still have Ms. Meyer showing as on your line?

Court Operator: No, Your Honor. Her line is no longer connected.

THE COURT: Oh. It's no longer connected. All right.

Then, Ms. Greer, I'm going to recommend a revision. I will dictate a decision on Ms. Meyer, but I wonder if it would make sense if Mr. Marangos wants to argue to move him up then and then I can dictate the decision thereafter.

MS. GREER: Sure. That's fine, Your Honor.

If you'd like, my colleague, Ms. Whitman, is here with me. She could go and see if she could get in touch with Ms. Meyer, have her dial back in. You know, I understand, perhaps, she got, you know, brought away. We could at least give her the opportunity. I think we can do that if you'd like.

THE COURT: I think that's an excellent idea. Can we do that?

OPERATOR: Sure.

THE COURT: Okay. Well, Mr. Marangos, are you on the phone?

MR. MARANGOS: Yes, Your Honor. I'm here.

THE COURT: Okay. Very good. All right. Then here's how we're going to do this one. Ms. Greer, I'm going to hear your objection first, then I'm going to hear Mr. Marangos, then I'm going to hear any reply that you might have to what Mr. Marangos says, and I'm going to give Mr. Marangos one opportunity further to be heard, but limited to any of the new stuff that you might say the

second time around.

MS. GREER: Sounds good, Your Honor.

THE COURT: Okay. Then go ahead, please.

MS. GREER: Mr. Marangos, I'd like to also thank you for your patience. I will be brief, Your Honor. I know you've read the papers and, of course, happy to answer any questions. Your Honor, Mr. --

MR. MARANGOS: Can you speak any louder? I'm unable to hear very well.

MS. GREER: I'm sorry, sir.

MR. MARANGOS: That's okay.

MS. GREER: Is that better?

MR. MARANGOS: Yes. Thank you.

MS. GREER: Okay. You're welcome. All right.

Your Honor, Mr. Marangos filed in excess of $20 million claim against the debtors. The claim is labeled as a claim for personal injury and other. The allegations in Mr. Marangos' claim have all been addressed in prior litigation before courts in Michigan. There were eight cases that Mr. Marangos filed against old GM. Each of those cases was resolved in favor of old GM. In certain cases, Mr. Marangos exercised his rights of appeal. In other cases, I'm not sure that he did. But in any event, all of those rights to appeal or seek reconsideration were well, are past prior to the commencement of the bankruptcy case.

It appears that -- all of the allegations that Mr. Marangos made are related to the prior litigation and Mr. Marangos acknowledges that.

MR. MARANGOS: Hello?

THE COURT: I'm not sure what that noise was, Ms. Greer, but why don't you try to continue?

MS. GREER: Okay. Sorry. And Mr. Marangos acknowledges that his claims as set forth in, his proof of claim, in fact, do relate to that same litigation. In his response, what Mr. Marangos says is that the prior litigation was subject to various corrupt practices and otherwise. I don't believe, Your Honor, there's any basis for any of that. Mr. Marangos filed numerous, numerous pages of documents, including his odyssey brief, which we addressed in part in our response.

But the bottom line, Your Honor, is that all of the allegations that he's made he had an opportunity to raise with GM prior to the bankruptcy. They were raised and litigated. Any allegations that those cases were not properly addressed, for whatever reason, have no basis in fact as I can see it and, certainly, all those rights expired prior to the bankruptcy case. So Mr. Marangos is essentially looking for another bite at the apple, so to speak, and we don't see any basis to give him one.

In short, Your Honor, there is no pre-petition

right to payment that gives rise to a claim and Mr. Marangos hasn't met his burden. So, Your Honor, we'd request that the Court expunge the claim and certainly reserve our rights with respect to anything Mr. Marangos has to say.

THE COURT: Very well. Mr. Marangos, would you like to be heard?

MR. MARANGOS: Again, I understand what the counselor is saying, but I want to add that I have sent a filing in to the Court and to the law office of Dickstein Shapiro to Ms. Stephanie, they will agree and explain what basically has transpired and why these cases have been dismissed. This case has however been dismissed under false pretense and especially over 100 exhibits I sent to the Court. I have the proof there was a filing of civil rights and EOC for discrimination, and they should not have dismissed the case unless it went to the full review and give me the opportunity to present myself at the Court and talk about it.

And, unfortunately, there is missing from the Sixth District Court of Detroit with no position and, if I'm not mistaken, the laws clarify he should not dismiss discrimination case from EOC civil rights until an end that shows satisfaction. Unfortunately, Judge O'Meara (ph) again, was not good with Spanish and, in fact, the EOC would have request the Sixth District Court to provide me with an

attorney because once the EOC complained and he denied this right to me.

Also, the court clerk can provide me with the full basis of the right to the Court to give me an attorney and I can when I submit to them they just deny me to provide an attorney to me.

So, basically, they have railroaded everything with end of my case, they say (indiscernible – 00:07:40) to be called and then I was given all the rights and the resource to stay on that before the case and follow the proper procedure and finalize. But, unfortunately, the Court would not allow me to present myself to the Court neither to see what has happened there behind closed doors. I did not bother to (indiscernible – 00:08:01). Nobody knows. (Indiscernible - 00:08:04) they have misplaced the EOC right to (indiscernible – 00:08:11). And to me that's not an excuse. It's supposed to have been very simple to us for me or the Court or somebody else to provide that (indiscernible – 00:08:22) letter back to (indiscernible – 00:08:24).

So basically all this has been kind of abnormal and there have bent all the rules basically and in order to dismiss this case is because if you read the brief I sent to you, you will find a lot more explanation of what has transpired over the years.

Now, to go to the filing of the law office of (Indiscernible – 00:08:51) to present by Dickstein Shapiro. I do realize that first filing from January 26 on the page of, not page, page number 5, which says there is no legal factual based on the claim. They haven't touched Exhibit F, on the very last page of the exhibits and that's the very same exhibit where they have falsified the exhibit to the federal courts, which was exclude on my WorldCom case. That's what base they use to go blame for discrimination, blackmail, et cetera, and before they don't even pay attention (indiscernible – 00:09:36) closed the case.

But this new law office now submit the same paper to the Court, to the Bankruptcy Court, to you as a hall of evidence to dismiss the case for a non-legal factual basis. Well, after I received all of this information, I reply and I should be hearing my reply by now and I closed the video tape over the World Com case. I closed the transcript. Also, other evidence to prove this Exhibit F, as they call them here, this law office. It was actually Exhibit A back in 1999, January 12, who the judge have exclude from the record because they forced me to sign, but this law office sent me that in order to divert the opinion of the Court and just dismiss the case.

Well, actually, see, my filing of February 2nd, I have a couple of more replies from the law office who they

start talking about the legal or factual basis, and they create a footnote and the last filing under page three, who they say they submit this exhibit back to the Court, to the Bankruptcy Court for reasons as supported under my (indiscernible – 00:11:04) for background information.

But as you see, they hold, to an exchange now, we're not talking about legal or factual basis of my case, but we tried to hide on the bottom of the page and so nobody pay attention, they did file it again to the Court falsify records. So for one more time, we (indiscernible – 00:11:29) be in 1999, excuse me, they providing again falsified records to the Court.

So I believe, I really believe this filing of the Dickstein Shapiro should be completely dismissed by the Court based on this falsified records provided into the Court. And I believe other courts should allow me to state my case and not have any more objection to that so go forward with that and be able, at some point in time, to have a ruling from you or someone else in order to close this case and go on with my life.

So any other information that you might need to know about this claim is a part of the paperwork I sent to you and the disks and also a cc to the law office, but I do believe I have legal and factual case here. Those (indiscernible – 00:12:37) just tried to throw them under

the board for other reasons, which is beyond my knowledge probably way up.

So pretty much that's what I have to say to Your Honor.

THE COURT: Okay. Thank you.

MR. MARANGOS: Thank you, Judge.

THE COURT: Ms. Greer, do you want to reply?

MS. GREER: Yes, Your Honor. Just briefly.

THE COURT: Go ahead.

MS. GREER: I don't want to belabor the point, Your Honor, but, you know, Mr. Marangos' attempts to recover from the debtors for these claims that he's asserted, both in his odyssey brief and in his proof of claim, are simply misguided. There's no factual basis, no legal basis, and the GUC Trust expressly refutes whatever facts Mr. Marangos has asserted.

I will point out, and as we said in our reply to Mr. Marangos' response, that we withdraw that exhibit from consideration without conceding any point and I certainly don't see any basis for why the record was falsified, as Mr. Marangos claims, but it was not essential to the pleading. In fact, it was just provided to give the Court background information as to the fact that Mr. Marangos was a former employee and that his employment terminated at a particular date.

So, Your Honor, I don't think we need to consider that at this time.

You know, again, I just wanted to reiterate that any claims that Mr. Marangos may or may not have had against GM were resolved in prior litigation. Mr. Marangos brought eight cases. They were resolved by motions to dismiss or summary judgment motions, all in favor of the debtors. So I think that sort of says it all, Your Honor, unless you have any questions.

THE COURT: No, I do not. Ms. Greer, have a seat, please.

Mr. Marangos, you will hear a moment or two of silence before I rule.

(Pause)

Ladies and gentlemen, this contested matter between the Motors Liquidation Company, GUC Trust, and Mr. Dimitrios Marangos arises in the jointly administered Chapter 11 cases of Motors Liquidation Company, formerly known as General Motors and its affiliated debtors.

The GUC Trust moves to disallow the claim of Mr. Marangos and, after considering the record on this motion and having heard oral argument, I am granting that motion to disallow the claim and disallowing the claim. And the following are my findings of fact and conclusions of law for that determination.

Mr. Marangos was a GM employee from 1977 until his resignation in 1999. By his own admission, he has filed no less than eight federal lawsuits against GM, all before GM's Chapter 11 case was filed for various reasons, including discrimination, swindling of intellectual property, blackmail, and conspiracy, among others. He also filed a Workers Comp. claim in Michigan, which was ultimately settled for $135,000.

As relevant here, Mr. Marangos' file, claim number 61381, in the amount of $20 million plus increases, I quoted, for the reasons of "personal injury/other." His claim form also attached information about his prior Workers Compensation claim, lists of the lawsuits he had filed against GM, information regarding an appeal of one such suit, and information about a pension from GM that he believed he was entitled to receive.

Mr. Marangos claimed in his response and its lengthy exhibits that GM falsified court records and that GM controlled the courts such that he did not receive a fair trial. Importantly, Mr. Marangos does not dispute that each of his lawsuits and his Workers Comp dispute were finally resolved before this bankruptcy case, including any opportunity to appeal.

In the case of Teachers Insurance versus Butler, 803 F. 2nd 61, Second Circuit, 1986, the Second Circuit

observed that a Bankruptcy Court is precluded from relitigating judgments rendered by courts of competent jurisdiction absent a showing that the judgment was procured by fraud or collusion at page 66. Thus, Mr. Marangos may not relitigate before me claims that he raised in his earlier lawsuits unless his claims fall within the fraud or collusion exception.

To fall within the exception, Mr. Marangos must meet certain pleading requirements. To adequately plead fraud, Mr. Marangos must meet the requirements of Bankruptcy Rule 7009, which is substantively identical to Federal Rule of Civil Procedure 9 and which states that a party must state with particularity the circumstances constituting fraud or mistake.

The contents of Mr. Marangos' pleadings, though voluminous, do not meet this stringent pleading requirement. He does not plead the fraud he alleges with sufficient particularity. Similarly, applying the lesser standard of Rule 8 of the Federal Rules of Civil Procedure, Mr. Marangos' allegations regarding collusion similarly do not rise to the requisite level to survive the claim objection raised by the GUC Trust. He has not alleged facts from which I can find that he has made a plausible claim that GM owned or otherwise controlled the courts that ruled against him or that it falsified court records.

In this connection, I note that the Supreme Court has many times told us in the pleading context that conclusory statements as to ultimate facts are not enough and, instead, the court must see facts which, if proven, would establish a plausible claim upon which the court could grant the relief. Here I cannot determine that the allegations, notwithstanding how voluminous they are, meet that standard.

The GUC Trust motion to disallow is accordingly granted in its entirety. Mr. Marangos' claim will be expunged.

Ms. Greer, do I still have a request that I take action to prohibit –- to absolve you from the need to respond to further pleadings?

MS. GREER: Your Honor, I think it would be a good idea out of an abundance of caution. Your Honor, I'd just hate to have the trust incur expenses associated with having to review the voluminous documents that have been presented to us to the extent he tries to take further action.

THE COURT: All right. Given the prior request for that in writing, I don't need to take further action on this by way of argument on this request. The order will also provide that, in the event he makes any further filings, the GUC Trust does not need to respond unless and until I or another judge so directs.

Ms. Greer, you are to settle an order consistent with this ruling at your earliest reasonable convenience. Mr. Marangos, do you remember what I said to the people ahead of you about what settling an order is? That means giving you an indication of what the order I am going to be asked to sign will say, in fact, it gives you a copy of that order, and gives you a chance to be heard on whether the order accurately embodies the Court's ruling.

You do not need to respond to that notice of settlement if you wish to appeal, but if you think that the proposed order doesn't accurately convey my ruling, you will have the opportunity to comment on it or to give me your version of an order that would, which is called a counter order, within the time provided in the notice of settlement.

As I indicated, it does not address or affect your right to appeal. You will have 14 days from the time of entry of the earlier order to appeal, but you have no more than that. I note, for the avoidance of doubt, that the time to appeal runs from the time of entry of the resulting order, not from the time that I am dictating this decision.

MR. MARANGOS: Yes, Your Honor. I hear that.

THE COURT: Thank you. All right. Mr. Marangos, you're free to drop off the line if you wish now.

MR. MARANGOS: Okay.

THE COURT: And Ms. Greer, we have the other matter involving Patricia Meyer and you have some undisputed matters?

MS. GREER: Yes. We have some undisputed matters, as well. Ms. Whitman reached out to Ms. Meyers and left her a message, but I don't know if she joined. Ms. Meyers?

OPERATOR: Excuse me, Your Honor. This is the CourtCall operator. Ms. Meyer has not rejoined at this time.

THE COURT: All right. Very well. Then, Court caller, is there anybody else left on the line who is still listening?

OEPRATOR: No, Your Honor, not at this time.

THE COURT: Okay. Then you are authorized to drop yourself off the line if you choose to.

OPERATOR: Yes, Your Honor. Have a wonderful day.

THE COURT: Thank you. We are, of course, staying on the record here and the court reporting equipment is continuing.

Go ahead, Ms. Greer.

MS. GREER: Thank you, Your Honor. With respect to Ms. Meyers, I understand Your Honor has read the pleadings. Would you like me to go through a little bit of the background information and the legal arguments or would you like me to rest on the papers?

THE COURT: No. Frankly, Ms. Greer, if she's not on the line, I don't want you saying anything more that she can't hear, and, instead, I'm going to dictate a decision.

MS. GREER: Okay.

THE COURT: And I think I should, while we're focused on it, do it now.

Based on a review of the papers, my ruling on Ms. Meyer's claim is as follows.

This contested matter between Patricia Meyer and the Motors Liquidation Company, GUC Trust, arises in the jointly administered Chapter 11 cases of Motors Liquidation Corporation, formerly known as General Motors Corporation, and its affiliated debtors, and the exercise of my discretion for the reasons that follow. The objection to the claim is sustained and the claim will be disallowed and expunged. While I said that this is an exercise of my discretion, I believe, in fact, that I can and should reach the same conclusion as a matter of law.

On September 16, 2009, I entered a bar date order establishing November 30, 2009, as the deadline for filing all proofs of claim against the debtors. The bar date order articulated the requirements for establishing a prima facie claim. Under the bar date order, all proofs of claim had to set forth with specificity the legal and factual basis for the alleged claim and include supporting documentation or an

explanation as to why such documentation was not available. See page two of that order at docket entry 4079.

In addition, the Court's official Form 10 and the form that I approved both required on their face that a claimant attached redacted copies of any documents that support the claim. It further explained that a claimant may be required to provide additional disclosure if the debtor trustee or another party in interest files an objection to such claim.

It's well established that a proof of claim will set forth the facts necessary to support the claim for the claim to receive the prima facie validity accorded under the bankruptcy rules. See Ashford versus Consolidated Pioneer Mortgage, 178 BR at 226, among many other cases.

When a claim is not considered prima facie valid, the burden remains with the claimant to establish the validity of the claim. See Lehman, 53 BR 256. I think I lost a digit there. Decision –- oh, Bankruptcy Court decisions, excuse me, 256. A decision by Judge Peck in 2010.

The bankruptcy code defines a claim as a right to payment. A right to payment is nothing more nor less than an enforceable obligation. A claim exists only if the obligation or if the relationship between the debtor and the creditor contains all elements necessary to give rise to a

legal obligation under relevant non-bankruptcy law. See, for example, Chategay, 53 F. 3rd at 497, a decision by the Second Circuit in 1995.

As for the type of claim asserted here, the District Court explained in U.S. v. Messer, 2000 Westlaw 991337, and I'm quoting, "Section 507A of the bankruptcy code establishes priorities for certain types of expenses and unsecured claims against a debtor. Eighth on this list of priority claims are claims for unpaid income taxes. This priority reflects Congress' determination that, when a debtor is in bankruptcy, the Internal Revenue Service, which cannot choose its debtors, should be paid before the general unsecured creditors that can.

Congress limited its priority, however, to tax liabilities for which a return was due within three years of the filing of the bankruptcy petition. As the statutory text of Section 5078A makes clear, priority is given to allow tax claims "of governmental units" not of private individuals.

Turning now to Ms. Meyers' claim, on October 26th, 2009, she filed proof of claim number 15927. On the face of her claim, she asserted an amount of "billions in back taxes" and the basis for her claim was "tax evasion." By checking a certain box on the proof of claim form, she, in fact, sought priority status for that claim under Section

5078A of the bankruptcy code as a tax or penalty owed to governmental units. Where the proof of claim asked the claimant to identify credits that might apply to the claim, she wrote, “Unknown. Check with the IRS.”

After considering this proof of claim, the debtors contacted Ms. Meyer to request that she provide a more specific dollar amount than “billions.” She responded by reducing her claim to a liquidated amount of exactly $500,000.

On January 6, 2012, the GUC Trust, which was formed under the debtors confirmed plan of reorganization, filed an objection to Ms. Meyers’ claim arguing that her claim was lacking in any supporting documentation or legal authority. In her response, she contended that her claim was “based on the cost of my organization’s investigation of the debtors and to others related to the debtor’s purported fraud.”

These expenses began in 1997, Ms. Meyer explains, that, of course, being 12 years before the bankruptcy, when GM workers became aware of rumors of a spin-off of GM’s parts division called Delphi. Apparently, these rumors led Ms. Meyer to incur expenses in the aggregate amount of exactly $500,000 over the course of the following 15 years. She described those expenses as including office rent, office supplies, communications, travel, meetings at various

meeting sites, and phone bills, none of which were itemized or cataloged. And even if they were, that is, even if there were proof that these expenses were actually incurred by Ms. Meyer, I remain unable to connect such expenses to a right of payment by the debtors to Ms. Meyer under the law.

To be clear, there is no evidence that Ms. Meyer herself was ever employed by GM or Delphi, nor is there any indication that she ever purchased a GM product, nor is there any indication that she ever sold any parts or assemblies to GM or that she provided any services to GM. Her connection to the debtor's employment or to the debtors in any way is entirely unclear. I have been unable to find any statutory or contractual relationship between Ms. Meyer and the debtors under which they would owe any sum, whether a sum in the amount of the billions or even $500,000.

As for Ms. Meyer's accusations, she contends that GM and Delphi were "cooking their books to appease Wall Street." She states that she felt she "had an honest claim" because GM "created the lie and fraud, therefore, it is GM's due to the American taxpayer." She attached to her response various pages of what appeared to be a prospectus for Delphi dated sometime around 1998, but the significance and relevance of this prospectus is impossible for me to ascertain.

In addition to the Delphi prospectus, she provided

in support of her claim e-mails and letters. Such correspondence proves that she occasionally contacted various governmental officials about her accusations concerning GM over the course of many years, but it fails to advance or substantiate her claims by any reasonable or comprehensible measure.

Apparently, Ms. Meyer wants to be reimbursed by GM for her investigation of GM, an investigation that led nowhere and produced no fruits whatsoever. She seems to have alleged fraud, but failed to logically tie that fraud to any discernible harm. She cited no legal authority or principles underlying her claims and I'm aware of none.

The federal rules require that allegations of fraud must be stated with particularity. Generalized allegations of fraud without more do not give rise to relief or a right to payment, especially where the claimant's connection to the alleged fraud is so completely mystifying.

Ms. Meyer's proof of claim neither articulates what GM did that might afford her legal relief, nor demonstrate how she would even have standing to pursue remedies against the debtor. And she plainly hasn't shown an entitlement to priority treatment under Section 507A-8 of the bankruptcy code, which is to be used by governmental taxing authorities only.

Even if I were to impose only the relaxed

standards for general unsecured claims under 502B, I necessarily would have to conclude and do conclude that she has alleged no legal obligation giving rise to a right of payment. Because her claim was so entirely lacking in supporting evidence and logical linkage to GM, it was not entitled to any presumption of prima facie validity and she failed to meet her burden for establishing a claim.

I determined that she has failed to meet her burdens to show an entitlement to relief from GM and that the claim, accordingly, must be expunged.

Ms. Greer, you're to settle an order in accordance with the foregoing at your earliest reasonable convenience.

MS. GREER: Yes, Your Honor. Thank you.

THE COURT: Do you want to deal with any other matters now?

MS. GREER: Your Honor, with the Court's indulgence, I'd like my colleague, Ms. Whitman, to quickly present to the uncontested omnibus objections.

THE COURT: Sure. Come on up, please, Ms. Whitman.

MS. WHITMAN: Mikaela Whitman from Dickstein Shapiro on behalf of the Motors Liquidation Company GUC Trust.

THE COURT: Welcome.

MS. WHITMAN: Thank you. We have three

uncontested omnibus objections before the Court today. They are the 266th omnibus objection. We have zero adjourned claims and five going forward. The 267th omnibus objection, we have 3 adjourned claims and 25 going forward. The 268th omnibus objection, one adjourned and five going forward.

Unless Your Honor has any questions, I'd like to ask the Court to approve these objections.

THE COURT: The objections are sustained. The claims will be disallowed to the extent you requested, so to the extent you continued them, we'll deal with them for another day. And I would ask you or one of your colleagues to get the order and floppy or CD with the proposed order over to my courtroom deputy, Ms. Blum (ph), at your earliest convenience.

MS. WHITMAN: Thank you, Your Honor.

THE COURT: Thank you. All right. It's now almost 2:15. Am I correct that we're done?

MS. GREER: Yes, Your Honor.

THE COURT: All right. Thank you, folks. We're adjourned.

(Whereupon these proceedings were concluded at 2:14 PM)

I N D E X

RULINGS

C E R T I F I C A T I O N

I, Dawn South, Cherri Brown, and Becky Flick, certify that the foregoing transcript is a true and accurate record of the proceedings.

Dawn South

Digitally signed by Dawn South
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Date: 2012.03.02 15:04:49 -05'00'

AAERT Certified Electronic Transcriber CET**D-408

Also transcribed by:

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Cherri Brown

Becky Flick

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Date: March 2, 2012